285

SUPREME COURT OF THE UNITED STATES.

No. 163.

WILLIAM STICKNEY AND HENRY DEAN, PL'FFS IN ERROR,

vs.

THE FARMERS AND MECHANICS' BANK.

IN ERROR TO THE CIRCUIT COURT U. S. FOR MASSACHUSETTS.

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J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

At the circuit court of the United States, for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Thursday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-five.

Before the honorable Joseph Story, associate justice; Peleg Sprague, district judge.

THE FARMERS AND MECHANICS' BANK, a corporation duly established by a statute of the State of Vermont, and having their usual place of business at Burlington, in the county of Chittenden, in the State of Vermont, the stockholders and members of which corporation are all citizens of said State of Vermont, plaintiffs,

versus

WM. STICKNEY AND HENRY DEAN, both of Boston, in said district of Massachusetts, merchants and co-partners, and citizens of the State of Massachusetts, defendants.

In a plea of the case, for that whereas, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and thirty-six, at Burlington, in the State of Vermont, to wit, at said Boston, said defendants had constituted and appointed one Orlin Rood, their agent, for the purchase of butter and cheese for and on account of them, the said defendants, and then and there authorized, ordered, directed, and instructed said Rood to draw his certain drafts and bills of exchange upon them, said defendants, for the purpose of raising money for purchasing butter and cheese, as aforesaid, for the account of the defendants, and for the purpose of paying for butter and cheese so purchased, and to be purchased, for said defendants by said Rood, as their agent in that behalf; and then and there authorized said Rood to negotiate, sell, and get said drafts discounted for the purpose and purposes aforesaid, and for and on their account. And said Rood, in pursuance of said authority so given him as aforesaid, and in the regular and proper execution of his said authority, and for and on account of said defendants, to wit, on the twenty-second day of November, in the year eighteen hundred and thirty-six, at said Burlington, made and drew a certain bill of exchange in writing, of that date, directed to the said defendants, under the firm and style of Stickney and Dean, at said Boston, and thereby requested the said defendants to pay to one Lewis Rood, or his order, four thousand dollars, three months after the said date, for value re-

ceived. And said Orlin Rood, on the same day last mentioned, also, and by the same authority, and in the same way and manner, and for the account of said defendants, then and there made and drew a certain other bill of exchange in writing, of that date, directed to said defendants, under the firm and style of Stickney and Dean, at said Boston, and thereby requested said defendants to pay to said Lewis Rood, or his order, four thousand dollars, four months after said date, for value received. And said Orlin then and there, by the same authority, in the same way and manner, and for account of the defendants, made and drew a certain other bill of exchange in writing, of that date, directed to said defendants under the firm and style of Stickney & Dean, at said Boston, and thereby requested said defendants to pay to said Lewis Rood, or order, two thousand dollars, three months after date, for value received. And said Orlin then and there procured said Lewis to endorse said several bills of exchange for the use and accommodation of the defendants, and then and there offered the said several bills of exchange to the plaintiffs to be discounted, and for account and use of the defendants, requested them to discount the same, and then and there made the plaintiffs fully acquainted with his said authority, and then and there exhibited to them the proofs of his said authority, so to draw and negotiate said drafts for account of the defendants. And said plaintiffs, relying on said Orlin's authority so to draw and negotiate said several bills of exchange, did then and there discount the same, and paid said Orlin therefor a large sum of money, to wit, the sum of nine thousand eight hundred and thirty dollars, and then and there took the said several bills of exchange; in consideration whereof said defendants then and there promised the plaintiffs to accept and pay said several bills of exchange, and the sums of money therein specified, according to the tenor and effect thereof. Yet, though said several times have long since elapsed, though often requested, said defendants did not, nor would, accept or pay the same, or either of them, or any part thereof, although they were severally duly presented for acceptance.

Also for that whereas, at said Burlington, to wit, at said Boston, on the twenty-second day of November aforesaid, said defendants had authorized one Orlin Rood to draw certain bills of exchange, to them directed at said Boston, to wit, one bill of exchange for the sum of four thousand dollars, payable to one Lewis Rood, or his order, in three months; one other bill of exchange for the sum of four thousand dollars payable to said Lewis Rood, or order, in four months; one other bill of exchange for the sum of two thousand dollars, payable to said Lewis Rood, or order, in three months; and then and there had authorized said Orlin to cause the same to be endorsed by said Lewis, for their account, and to negotiate [and] pass the same for and on their account; and said Orlin, in pursuance and in execution of said authority, did then and there, on the same day, procure said Lewis to endorse the same on the account of said defendants, and did pass and negotiate the same to the plaintiffs, for a valuable consideration therefor to him paid by said plaintiffs, to wit, the sum of one thousand eight hundred and

thirty dollars, of which said defendants had on the same day notice, and in consideration thereof said defendants then and there promised the plaintiffs to accept said several bills of exchange on presentation thereof, to pay the same at maturity of said bills of exchange respectively; and although said bills of exchange were there afterwards duly, to wit, on the same day, presented to the defendants for acceptance, yet said defendants did not accept the same, nor pay the same at the maturity thereof, respectively, although requested so to do.

Also for that heretofore, to wit, on the said 22d day of November, at said Boston, by a certain writing by them under their hands subscribed, [they] authorized one Orlin Rood to purchase, at said Burlington, in the county adjacent thereto, certain goods [and] merchandise for their account, and for the purpose of raising money to pay for said goods and merchandise, to draw drafts and bills of exchange on them, at said Boston, from time to time, for the purpose aforesaid; and said Orlin thereafterwards, on the same day, in pursuance of said authority, drew three certain other drafts and bills of exchange of the same dates and amounts, and payable to the said person, and at the times those drafts mentioned and described in the first count of this declaration, and similar in every respect thereto, respectively, and caused the same to be endorsed by said Lewis for the accommodation and on account of the defendants; and then and there afterwards, on the same day, passed and negotiated the same to the plaintiffs for the purposes aforesaid, and in the execution of said authority; and said Orlin then [and] there explained and exhibited to the plaintiffs his said authority, and the proofs thereof; and said plaintiffs, relying on his said authority so to draw and negotiate said drafts, in the full faith and belief that said Orlin was so authorized, then and there took and discounted said several drafts, and paid said Orlin, as agent of the defendants, a large sum of money, to wit, the sum of nine thousand eight hundred and thirty dollars; and, in consideration thereof, said defendants then and there, at said Burlington, to wit, at said Boston, promised to accept said drafts respectively, and to pay the same at the maturity thereof respectively; yet, although said drafts were duly presented to the said defendants, at said Boston, for acceptance, said defendants neglected and refused to accept the same, although the said drafts were respectively presented to the defendants at maturity thereof respectively, yet said defendants did not pay the same, or either of them, though requested.

Also for that whereas heretofore, to wit, at said Burlington, to wit, at said Boston, on said twenty-second day of November, one Orlin Rood, the agent of the defendants in that behalf, had drawn three other drafts and bills of exchange, similar in all respects to those mentioned and described in the first count of this declaration, in favor of said Lewis Rood; and said Lewis Rood had then and there endorsed the same, on consideration that the plaintiffs, at the special instance and request of said defendants, would then and there discount said drafts and bills of exchange, [and] would pay them therefor a large sum of money, to wit, the sum of nine thousand eight hundred and thirty dollars, said defendants then

and there promised to accept said drafts and bills of exchange on presentation thereof respectively to them at said Boston; and said plaintiffs, relying on said promise and undertaking, then and there discounted said several drafts, and paid said defendants therefor said sum last mentioned; yet said defendants did not nor would accept said drafts, although the same and each of them were afterwards, on the same day, presented to them for acceptance. All which is.

Also for that said defendants, at said Boston, heretofore, to wit, on the day of the purchase of this writ, being indebted to the plaintiffs in the further sum of sixteen thousand dollars, for divers goods, wares, and merchandise, by the plaintiffs before that time sold and delivered to said defendants, at their request, and also for the plaintiffs' work and labor, care and diligence, before them done and bestowed, in and about the business of said defendants, at their request, and also for money by the plaintiffs before that time lent and advanced to, and paid, laid out, and expended for, the said defendants, at their request; and also for other money by said defendants before that time had and received to the plaintiff's use; and also for other money, before that time and then due, and payable from said defendants to the plaintiffs, for interest upon, and for forbearance of money before then due and owing from said defendants to the plaintiffs, and by the plaintiffs forborne to said defendants, at their request, for divers long spaces of time before then elapsed, in consideration thereof, then and there promised the plaintiffs to pay them said sums on demand; yet said defendants, though often requested, have never paid said sums, nor any part thereof, but neglect and refuse so to do.

Also for that said defendants, at said Burlington, to wit, at said Boston, on said twenty-second day of November, by one Orlin Rood, their agent on that behalf, duly authorized thereto, drew upon them, the said defendants, at said Boston, three other drafts and bills of exchange, similar in all respects to those mentioned and described in the first count of this declaration, and by their said agent requested the plaintiffs to discount the same, and loan them money thereon; and then and there promised the plaintiffs that, if [they] would discount the said bills of exchange, that they, the said defendants, in consideration thereof, would accept the same upon presentation thereof to them at said Boston, and would duly pay the same at the maturity thereof; and said defendants, relying on said promise, did then and there discount the said drafts and bills of exchange for the defendants, and did then and there loan to the defendants, on said drafts and bills of exchange, a large sum of money, to wit, the sum of nine thousand eight hundred and thirty dollars; yet the said defendants, although said drafts and bills of exchange were presented to them at said Boston, to wit, on the twenty-fourth day of said November, did not nor would accept the same; and although said drafts were duly presented to them at said Boston, at the maturity thereof, respectively, did not nor would pay the same; and have never paid the same, nor any part thereof, to the damage of the said plaintiffs, as they say, the sum of sixteen thousand dollars.

Willett and Hall in all matters faithful agents

thirty dollars, of which said defendants had on the same day notice, and in consideration thereof said defendants then and there promised the plaintiffs to accept said several bills of exchange on presentation thereof, to pay the same at maturity of said bills of exchange respectively; and although said bills of exchange were there afterwards duly, to wit, on the same day, presented to the defendants for acceptance, yet said defendants did not accept the same, nor pay the same at the maturity thereof, respectively, although requested so to do.

Also for that heretofore, to wit, on the said 22d day of November, at said Boston, by a certain writing by them under their hands subscribed, [they] authorized one Orlin Rood to purchase, at said Burlington, in the county adjacent thereto, certain goods [and] merchandise for their account, and for the purpose of raising money to pay for said goods and merchandise, to draw drafts and bills of exchange on them, at said Boston, from time to time, for the purpose aforesaid; and said Orlin thereafterwards, on the same day, in pursuance of said authority, drew three certain other drafts and bills of exchange of the same dates and amounts, and payable to the said person, and at the times those drafts mentioned and described in the first count of this declaration, and similar in every respect thereto, respectively, and caused the same to be endorsed by said Lewis for the accommodation and on account of the defendants; and then and there afterwards, on the same day, passed and negotiated the same to the plaintiffs for the purposes aforesaid, and in the execution of said authority; and said Orlin then [and] there explained and exhibited to the plaintiffs his said authority, and the proofs thereof; and said plaintiffs, relying on his said authority so to draw and negotiate said drafts, in the full faith and belief that said Orlin was so authorized, then and there took and discounted said several drafts, and paid said Orlin, as agent of the defendants, a large sum of money, to wit, the sum of nine thousand eight hundred and thirty dollars; and, in consideration thereof, said defendants then and there, at said Burlington, to wit, at said Boston, promised to accept said drafts respectively, and to pay the same at the maturity thereof respectively; yet, although said drafts were duly presented to the said defendants, at said Boston, for acceptance, said defendants neglected and refused to accept the same, although the said drafts were respectively presented to the defendants at maturity thereof respectively, yet said defendants did not pay the same, or either of them, though requested.

Also for that whereas heretofore, to wit, at said Burlington, to wit, at said Boston, on said twenty-second day of November, one Orlin Rood, the agent of the defendants in that behalf, had drawn three other drafts and bills of exchange, similar in all respects to those mentioned and described in the first count of this declaration, in favor of said Lewis Rood; and said Lewis Rood had then and there endorsed the same, on consideration that the plaintiffs, at the special instance and request of said defendants, would then and there discount said drafts and bills of exchange, [and] would pay them therefor a large sum of money, to wit, the sum of nine thousand eight hundred and thirty dollars, said defendants then

and there promised to accept said drafts and bills of exchange on presentation thereof respectively to them at said Boston; and said plaintiffs, relying on said promise and undertaking, then and there discounted said several drafts, and paid said defendants therefor said sum last mentioned; yet said defendants did not nor would accept said drafts, although the same and each of them were afterwards, on the same day, presented to them for acceptance. All which is.

Also for that said defendants, at said Boston, heretofore, to wit, on the day of the purchase of this writ, being indebted to the plaintiffs in the further sum of sixteen thousand dollars, for divers goods, wares, and merchandise, by the plaintiffs before that time sold and delivered to said defendants, at their request, and also for the plaintiffs' work and labor, care and diligence, before them done and bestowed, in and about the business of said defendants, at their request, and also for money by the plaintiffs before that time lent and advanced to, and paid, laid out, and expended for, the said defendants, at their request; and also for other money by said defendants before that time had and received to the plaintiff's use; and also for other money, before that time and then due, and payable from said defendants to the plaintiffs, for interest upon, and for forbearance of money before then due and owing from said defendants to the plaintiffs, and by the plaintiffs forborne to said defendants, at their request, for divers long spaces of time before then elapsed, in consideration thereof, then and there promised the plaintiffs to pay them said sums on demand; yet said defendants, though often requested, have never paid said sums, nor any part thereof, but neglect and refuse so to do.

Also for that said defendants, at said Burlington, to wit, at said Boston, on said twenty-second day of November, by one Orlin Rood, their agent on that behalf, duly authorized thereto, drew upon them, the said defendants, at said Boston, three other drafts and bills of exchange, similar in all respects to those mentioned and described in the first count of this declaration, and by their said agent requested the plaintiffs to discount the same, and loan them money thereon; and then and there promised the plaintiffs that, if [they] would discount the said bills of exchange, that they, the said defendants, in consideration thereof, would accept the same upon presentation thereof to them at said Boston, and would duly pay the same at the maturity thereof; and said defendants, relying on said promise, did then and there discount the said drafts and bills of exchange for the defendants, and did then and there loan to the defendants, on said drafts and bills of exchange, a large sum of money, to wit, the sum of nine thousand eight hundred and thirty dollars; yet the said defendants, although said drafts and bills of exchange were presented to them at said Boston, to wit, on the twenty-fourth day of said November, did not nor would accept the same; and although said drafts were duly presented to them at said Boston, at the maturity thereof respectively, did not nor would pay the same; and have never yet paid the same, nor any part thereof, to the damage of the said plaintiffs, as they say, the sum of sixteen thousand dollars.

This action was entered at the May term of this court, A. D. 1841, and was thence continued from term to term until the present term.

And now, the said William Stickney and Henry Dean, by their attorney, Sidney Bartlett, come and defend, &c., when, &c., and say they never promised in manner and form as the plaintiffs have declared against them; and of this they put themselves on the country.

And the plaintiffs, by their attorney, Francis B. Crowninshield, do the like.

Issue being thus joined, the cause, after a full hearing, is committed to a jury, sworn according to law to try the same; who, after hearing all matters and things concerning the same, return their verdict therein upon oath, that is to say:

The jury find that the defendants did promise in manner and form as the plaintiffs have declared against them, and assess damages in the sum of eight thousand four hundred and forty-five dollars and twenty-eight cents.

It is therefore considered by the court that the said Farmers and Mechanics' Bank recover against the said William Stickney and Henry Dean the sum of eight thousand four hundred and forty-five dollars and twenty-eight cents, and costs of court taxed at

Attest: JAS. B. ROBB, *Clerk*.

FARMERS & MECHANICS' BANK
vs.
WM. STICKNEY and al.

Defendants' bill of exceptions.

Be it remembered, that during the trial of the cause aforesaid, the defendants, by their attorney, filed in court here the following bill of exceptions, to wit:

On the trial of this cause the plaintiffs, to maintain their action, adduced the following evidence:

Original bills of exchange, of which the following are copies:

$2,000. *November 22d*, 1836.

Three months after date, please pay to Lewis Rood, or order, two thousand dollars, for value received, which charge to account of your obedient servant,

ORLIN ROOD.

To Messrs. STICKNEY & DEAN, *Boston*.

Endorsed.

Pay to the order of J. Peck, pres't.

LEWIS ROOD.

Pay to the order of S. O. Mead, esq., cashier.

JNO. PECK, *Pres't*.

$4,000. *November 22d*, 1836.

Three months after date please pay to Lewis Rood, or order, four

thousand dollars, for value received, which charge to the account of your obedient servant,

OLIVER ROOD.

To Messrs. STICKNEY & DEAN, *Boston*.

Endorsed.

Pay to the order of Jno. Peck, pres't.

LEWIS ROOD.

Pay to the order of S. O. Mead, esq., cashier.

JNO. PECK, *Pres't*.

$4,000. *November 22d*, 1836.

Four months after date please to pay Lewis Rood, or order, four thousand dollars, for value received, which charge to account of your obedient servant,

ORLIN ROOD.

To Mess. STICKNEY & DEAN, *Boston*.

Endorsed.

Pay to the order of Jno. Peck, pres't.

LEWIS ROOD.

Pay to the order of S. O. Mead, esq., cashier.

JNO. PECK, Esq., *Pres't*.

Plaintiffs also produced and put in evidence an original agreement between defendants and Orlin Rood and others, dated March 5th, 1836, as follows:

Agreement betwixt Fallett and Bradleys, of Burlington, Vt., and Orlin Rood, of Jericho, Vermont, of the first part, and William Stickney, of Boston, of the second part.

Fallett and Bradleys and Rood are to purchase all the butter and cheese they can buy in the vicinity of Burlington, Vt., from this date until the first of November next, and to deliver the same to the said William Stickney, on board a vessel at Burlington, Vt., or other ports on Lake Champlain, on the following terms:

Said William Stickney is to furnish funds as wanted, from time to time, when called upon; to fulfil all contracts made by the said Fallett and Bradleys and Rood, and to pay Fallett and Bradleys and Rood for buying and shipping butter one cent per pound, and half a cent per pound for buying and shipping cheese, said Stickney to pay actual cost of packages and freight to the lake.

And for all butter and cheese shipped at Burlington, Stickney is to pay six cents per cask for cheese, and three cents per keg for butter for stowing the same; and for all butter and cheese shipped elsewhere, Stickney to pay actual cost of wharfage and storeage; said Fallett and Bradleys and Roods are to use due diligence in buying, and in all matters and things relative to said contract, they are to act as faithful agents

of the said Stickney. And it is understood that the said Stickney is to instruct the said Fallett and Bradleys and Rood, from time to time, what prices to pay for the said butter and cheese, and in case Fallett, Bardleys, and Rood exceed their limits, the said Stickney is not bound to take the butter and cheese which they may pay too high for, but he is to decide before the property is shipped whether he will take it or not.

Said Fallett, Bradleys, and Rood to keep Stickney advised, from time to time, how much they have bought, and what prices they have paid, &c."

WILLIAM STICKNEY,
FALLETT & BRADLEYS,
ORLIN ROOD.

Signed, Boston, March 5, 1836.

On the back of the foregoing instrument is the following writing, shown to have been duly executed by the parties thereto, to wit:

RICHMOND, *Aug't* 6, 1836.

This is to certify, that I, William Stickney and Orlin Rood do hereby discharge the above named Fallett and Bradleys from all and every obligation mentioned in the within contract, leaving this contract binding on Orlin Rood only.

Signed, WM. STICKNEY,
ORLIN ROOD.

Pl'f also produced and read in evidence the following correspondence between Rood and dfts.

(See schedules A and B.)

Pl'f also produced as a witness Willis Lyman, who testified that he is an attorney at law, resident at Burlington; that he was well acquainted with Rood, and became acquainted with def'ts in 1837 or 1838; that witness was a director of plf's bank in 1836; that Rood applied to him to know whether the bank would discount his bills on def'ts, alleging that he was their agent to purchase butter and cheese in that region of the country.

That after inquiring into the commercial standing of df'ts house, the bank gave Rood encouragement that they would discount such bills when convenient.

That Rood exhibited to him the original agreement between him and def'ts.

That Rood was relied upon as an active judicious man, but not as a man of property.

That in making the discounts pl'ffs relied upon the business character of the transaction, and upon the df'ts.

That Rood exhibited the letters of df'ts at the bank; but could not specify which; that in some of them df'ts complained that they wanted longer accommodation, and urged that pl'fs should give longer time.

That the bank upon one, if not more than one occasion, did give longer time by taking the notes of Rood, with an agreement at the time

that at their maturity they would discount a draft on the df'ts to meet them.

That these notes were signed by Rood, and payable to and endorsed by his brother.

That witness understood that Rood was dfts' agent, and relied upon the credit of df'ts and the contract, and that it was going on in good faith. Was present when these three bills were discounted; Rood said he wanted the money for buying butter and cheese; he said they were in part for notes held by the bank, amounting to $6,000 or $8,000. Those notes had been given in August or September, in consequence of his exhibiting letters urging longer credit, and plaintiffs adopted that mode of granting it.

And when he applied for discount of these bills, he said he wanted more than the notes; some money to pay for butter and cheese; wanted the $2,000 for that business.

The notes were taken solely to give the df'ts the credit they asked for.

That witness knew of the assignment of Rood's suit against df'ts to these pl'fs. Was counsel in the prosecution of it.

That in [the] Spring of 1838, witness went to Stickney and Dean's store, and found Dean, Stickney being absent, and told Dean that the bank supposed that they had a good claim upon them for the amount of the drafts; that the bank had the letters written by df'ts to Rood, which furnished, as they supposed, strong evidence of their claim; and asked if they had kept copies of their correspondence, and Dean replied that they had.

That witness said it seemed as if the other matter, (referring to the suit,) was going to be endless, and he was anxious to have the bank affairs adjusted.

Thought that this was before any hearing before referees. That he told Dean that the bank would look to them for the amount of these drafts, or for any deficiency that should remain after the termination of the reference, and that he did not consider it important to continue that matter along.

That he never said anything afterwards to lead them to think differently, and that Dean must then have known of the assignment.

Witness testified that when he said the bank made the discount upon the credit of the dfts., he meant to say that they trusted to it as a business transaction, which they were disposed to encourage, and upon the credit of dfts.; that he supposed they were bound; that when Rood told him of the contract and the terms, he inferred that they were bound by reason of that agreement; that he was their agent.

Upon re-examination in chief.

That the expenses in the suit before the referees, paid by the bank, were $200 to Messrs. Rand & Fiske, $613.15 to witness, $50 to Lyman & Marsh. Pl'ffs also produced as a witness Sam. O. Mead, who testified to presentation of bills to dfts., and their refusal to accept; and

testified that they had formerly accepted many others drawn by Rood upon them.

That two were not accepted; thinks these were the very last; all the others were promptly accepted. Inquiry was made of him about [the] solvency of Stickney & Dean by Hinckley; cannot fix the time. Recollected saying that their credit was undoubted.

The pl'ffs also produced Charles F. Warren, who testified that he was cashier of the pl'ffs' bank; that the person [who] was cashier at the time of these transactions had deceased.

That the amount of similar drafts on the dfts. which were accepted, was $28,000. That the drafts described in the pl'ffs' declaration were drawn to pay three notes, due or becoming due about that time; two each for $2000, and one for $4000.

One for $2000 dated Sept. 5, at 3 mos.
One for $2000 " " 24, at 60 ds.
One for $4000 " " 29, at 60 ds.

Did not recollect that Rood said anything when drafts were discounted, but when he received the money on the notes, he said he wanted it to buy butter and cheese.

That the parties to the notes were Orlin Rood, promissor, and Lewis Rood, promissee and first indorser, and Thos. D. Rood, second indorser.

The pl'ffs also introduced John Peck, who testified that he was president of the bank till within a few days, when he transferred his stock in order to become a witness.

That he knew Rood. That Rood stated that he should want accommodation at the bank upon drafts on the dfts., being their agent to purchase produce in that region.

That he represented that he could draw on dfts., and that witness being satisfied of his authority to draw, asked the cashier to satisfy himself of the responsibility of dfts., and instructed him that if he should find it satisfactory, it was a business the bank would be willing to do.

This witness generally confirmed the testimony of Lyman as to the transactions at the bank, and the understanding of the officers in the negotiations, and that the notes were not taken relying upon Rood at all except as a go-between.

To maintain the issue on their part, the defendants then introduced the following evidence, to wit: the writ, declaration, and particular of claim filed in a suit theretofore brought by Orlin Rood, in this court, against said def'ts, copies of which are hereto annexed, marked C. The pl'ffs also read in evidence a rule of court, by which said suit was submitted to arbitration and the award thereunder, and showed that the said award had been duly accepted, and judgment rendered thereon, and that the same had been paid by def'ts, which rule of court and award was as follows:

UNITED STATES OF AMERICA:

Circuit court of the U. S., Oct. term, 1837. C. C. No. 39.

ORLIN ROOD
vs.
WILLIAM STICKNEY & al.

And now the parties appear by their counsel, and agree to refer this action to the determination of William D. Sohier, Joseph Eveleth, and John A. McGaw, all of Boston; their report, or any two of them to be made as soon as may be. Judgment thereon to be final, and execution to issue accordingly; and if either party neglect to appear on due notice, the referees may proceed *ex parte*.

Attest:

(Signed) FRANCIS BASSETT, *Clerk.*

CIRCUIT COURT, UNITED STATES,
District of Massachusetts:

ORLIN ROOD
vs.
WILLIAM STICKNEY and Henry Dean.

The undersigned, to whom this action was referred by the rule annexed, met the parties by their counsel, and heard fully their respective allegations and proofs touching the matters in difference, and we find that there is due and payable from and by the defendants to the plaintiff, the sum of forty-nine hundred sixty-two dollars and thirty-five cents. (4962.35.)

We therefore award, that judgment shall be rendered in this action against said defendant for said sum of forty-nine thousand sixty-two dollars and thirty-five cents, with interest thereon from the tenth day of June current, in favor of said plaintiff, together with the taxable costs, and one moiety of the costs of this reference, which are taxed at three hundred and twenty-five dollars, for the services of the referees.

Boston, June 15th, 1840.

(Signed) W. D. SOHIER,
JNO. A. McGAW,
JOSEPH EVELETH.

Opened out of court by consent, and without prejudice, and no objection to be made on that account.

(Signed) RAND & FISKE, *for plaintiff.*
LORINGS & DEHON, *for defendants.*

Defendants also called, as a witness, Wm. D. Sohier, esquire, who testified, that he was chairman of the arbitrators to whom the said suit of Rood vs. Defendants was referred; that the first hearing was 5th December, 1839; that the reference was finished on 26th or 27th May, 1840, and award delivered 15th June, 1840.

That said Lyman appeared for the bank, and opened the case as counsel, and conducted the evidence.

That there were several sessions.

That no credit was ever given to defendants for any money received upon the protested drafts, and no notice given that any had been received upon them.

That there was a claim made for $300 for damages for the protest of these three drafts, but that nothing was claimed on account of the drafts, and no credit ever given or claimed for them. That the drafts credited were all produced and checked.

Identified an account as having been produced at the hearing before said arbitrators, (of which a copy is annexed, marked D,) and which he testified was considered evidence that the drafts and cash paid by defendants amounted to $58,646 86, and that of these, sent Rood by defendants, there were $6,500 in bank bills.

That the $58,000 were admitted to have been paid towards the purchases.

Witness also identified the account in schedule E as having been presented by defendants, which gave credit on one side for all that Rood claimed, and charged him with all which they claimed to have against him; and that no credit was given for the $10,000, being the amount of these bills.

That the aggregate amount of the Weller & Jones butter, which defendants refused to accept because bought contrary to their instructions, and the proceeds of which they professed to hold to the credit of Rood, was $5,500.

Could not testify as to the particulars in making up the award. That a loss was claimed to have taken place in consequence of these articles being bought beyond limits, or after the time, that defendants contended that they were not bound to receive it, and allowed the amount in their account, and charged a loss against it.

Jno. McGaw, who testified that he was one of the referees; that there was no intimation before them that defendants were entitled to a credit for the $10,000 received on these bills, and no suggestion that any credit should be given; nor did he hear throughout the whole trial that the bank ever claimed that defendants were liable for these drafts, or on account of them.

Mr. Sohier, being called again by plaintiffs to state what the claim made in the trial was, testified that it was stated in the said paper marked E.

The defendants then gave in evidence the assignment from Rood to plaintiff, of which a copy is hereto annexed, marked F.

Defendants also produced as a witness Jno. E. Short, who testified that Rood came to defendant's counting-room with these bills, which he said exceeded his purchases by about $2,000, and that he had the surplus with him to pay over to them if they would accept the bills.

That Stickney censured Rood very sharply for the course he had taken, and the quality of the articles bought, and refused to settle with him upon any such terms, and refused to accept the drafts, unless they received what he (Stickney) considered a fair allowance for over charges and bad quality of the articles, and inattention to his duty.

That Rood said nothing about defendants being bound by these bills, according to witness' recollection.

The plaintiffs read Rood's deposition, which is hereto annexed, marked G.

Upon this evidence the defendants contended as matters of law, and prayed the instructions of the court.

I. That the adoption by plaintiffs, and their prosecution as assignees of the suit of Rood against the defendants under the circumstances in proof, and the award and receipt of the amount for which judgment upon it was rendered, were a waiver of any right of action, if any they ever had, against the defendants, and constitute an estoppel or bar to the claim made in this suit.

But the presiding judge ruled that they were no such waiver, estoppel, or bar.

II. Defendants contended that the alleged notice, which the witness Lyman testified to, was not in point of law any notice of the claim now set up.

But the presiding judge left it to the jury to decide whether upon his testimony the defendants were or were not so notified.

III. The defendants contended, that if his statement did amount to notice of this claim, yet that the subsequent prosecution of the suit as assignees of Rood, and the proceedings under it, as appearing in proof, were a waiver or abandonment both of the notice and claim. But the presiding judge ruled otherwise.

IV. The defendants contended, that neither the contract between Rood and the defendants, nor the correspondence, nor any acts of the parties under them in proof, constituted in point of law any promise on the part of the plaintiffs to accept any bills for borrowing money.

But the presiding judge charged the jury, that the question of authority was one of fact for them to decide, and not a question of law for the court to rule upon.

V. That if Rood had any authority by the terms of the contract or correspondence, to draw any bills binding upon defendants, such authority was confined to bills to be drawn for purchases actually contracted for or made; and the plaintiffs in dealing with him were bound to know the extent of that authority, and took the risk of it.

And as the judgment in the suit between Rood and the defendants, prosecuted by the plaintiffs as assignees, established the fact, as defendants alleged, that these bills were not drawn for any amount owing from defendants to him on any such account, they were not binding upon the defendants.

But the presiding judge overruled this point, and left it to the jury to decide whether, at the time the bills were drawn, Rood had authority to draw them.

VI. The defendants contended, as a matter of law, that if Rood had any authority to bind the defendants, by any bills under the contract, or correspondence, or any other fact proved in the case, he had none to bind them by bills drawn for the payment of such notes as these were

drawn for the purpose of paying, and that the evidence showed no promise of defendants to pay any such.

But the presiding judge overruled the point, and left the whole question open to the jury upon the authority to raise money for the use of the defendants.

A question having arisen before the jury retired, as to the mode in which the sum received by plaintiffs under the award in said suit of Rood against defendants should be appropriated, in case the jury should not find in favor of plaintiffs upon the draft for $2000, dated 22d November, 1836, it was by consent of parties directed that the verdict should be returned, if for plaintiffs, for a gross sum, and indicate upon which of the drafts the same was founded, leaving the question of appropriation to be settled by the court, and the verdict altered accordingly.

The jury having found a verdict for the plaintiffs only upon the two drafts of $4000 each, the plaintiffs' counsel insisted that the amount received by them under the award should be appropriated, after deducting the expenses in prosecuting the suit, to the payment of the $2000 draft on which the verdict was for the defendants, and the balance only to the two drafts upon which the verdict was rendered.

The defendants, on the other hand, insisted that the whole amount received under the award, without deducting any expenses, should be appropriated towards the payment of the two drafts upon which the plaintiffs had recovered the verdict.

But the court ruled that the amount so received, after deducting the expenses, should be appropriated towards the extinguishment of all three of the drafts pro rata, and that verdict should be entered accordingly.

To all of which rulings and refusals the defendants do except, and pray the court that this their bill of exceptions be signed and sealed by the court.

All which being found true, the same is accordingly signed and sealed.

In testimony whereof I have hereunto set my hand and seal, this 30th day of May, A. D. 1845.

PELEG SPRAGUE,
Judge of the U. S., Mass. district.

Schedule A.

BOSTON, *April* 8, 1836.

MR. ORLIN ROOD:

DEAR SIR: I send you a price current, which you will perhaps find of some service to you; hope you will pay good attention to the cheese contracts, and not pay over 7c. for small dairies. Money is scarce, and most likely will be so through the summer, which will have a tendency to stop speculation. Please inform me of the lot of cheese you mentioned sending; cheese is 10 to 15c. in New York, but will, most likely, be lower as soon as the river opens.

Yours, W. S.

BOSTON, *June 2d*, 1841.

MR. ORLIN ROOD:

DEAR SIR: We wish you to purchase what you can of good quality in St. Lawrence county, N. Y., on our account, at 12½c. per lb., and forward as soon as possible to us, and draw on us for the amount of purchases, by forwarding the bills.

Yours, S. & D.

BOSTON, *June* 11, 1836.

MR. ORLIN ROOD:

DEAR SIR: Since you left we have not heard from you; we have to-day received the cheese you bought, and they are in bad order, appear as if they had been frozen, but we shall see more of them on Monday. We have received considerable butter from N. Y., bought at 10½ *a* 13, most of which is sold, and there is now but little in market of any kind; new is selling 16 to 20, old 14 to 20. We hope you have started what you have bought before this; have but little to write you at present.

Yours, S. & D.

Copy of letters to Orlin Rood.

BOSTON, *June* 24, 1836.

MR. ORLIN ROOD:

DEAR SIR: Your favor of the 18th is received, and, in answer, am glad you are starting a lot of butter; we are nearly out of butter and cheese; the lot you bought for Dean comes out in bad order, and will not more than pay cost; Ketcham's were also in bad order, and we think will not pay much profit; we have sold better than we expected, as the weather has been favorable; have heard nothing from Dean since he left Baltimore; we shall probably accede to any arrangements you may make with Messrs. Folletts and Bradleys, if not against our interest; think the butter must come in good order, if taken proper care of. Please keep us constantly informed of your operations in the produce; presume you have made no operation as we talked when you left here, but hope, should the prospect appear favorable, you will proceed.

Yours, [WILLIAM STICKNEY.]
STICKNEY & DEAN.

BOSTON, *June* 25, 1836.

MR. O. ROOD:

DEAR SIR: We wrote you yesterday, but did not mention respecting money; we are now in a better condition to pay than when you left, and shall answer the amount of your purchases; nothing new to-day.

Respectfully, yours, STICKNEY & DEAN.

BOSTON, *July* 4, 1836.

MR. ORLIN ROOD:

DEAR SIR: Your letter of the 27th is received, and the 150 packages butter have arrived, but not landed; we think they will be in good or-

der; hope you will forward the balance you can collect as soon as the weather will admit, it is rather risky sending so late, and it should be taken particular care of; we think 17 c. quite too [high] much to pay for any butter at this season: it will not pay any profit; we think you had not better pay over 6 to 7 c. for any cheese at present; we have sold all but 5 casks of Ketcham's cheese; have no butter of good quality on hand; hope you will pay particular attention to quality of butter and cheese; Mr. Dean has not returned [yet]. Respectfully, yours,

S. & D.

BOSTON, *July* 9, 1836.

Mr. ORLIN ROOD:

DR. SIR: Your letter, 4th, is received; we have also received the first lot of butter, some of which is of poor quality and will not sell for more than you paid for it without charges; we see no reason for paying more than last season's prices for butter and cheese, and indeed we do not think it worth so much from present prospects. If farmers are not willing to sell their produce at fair prices, let them bring it to market themselves a year or two, and then they will be willing to sell; we do not wish you to purchase butter on our account at over 12½ cts., and cheese at over 5 to 7 cts. for the best; we hope you have not attempted to move any butter in this warm weather; you will undoubtedly use your own judgment in this respect. One of the 4 casks cheese was spoiled, the others appear to be in good order for skim cheese. We have sold but little of the butter; the article is dull sale, and will not bring over 15 to 18. Respectfully, yours,

S. & DEAN.

Mr. ORLIN ROOD: BOSTON, *July* 18*th*, 1836.

DR. SIR: Your favor of the 12th is received, and your drafts of 2,000, amount to 4,000, have come to hand and accepted; also we have accepted one from Follett and Bradley for 600, date June 27th, at 30 days; we have now accepted 5,100; we hope you will forward us invoices of all goods shipped as fast as you ship, and send the weights of each package.

We should wish the butter here as soon as possible, if it can be put on board the Albany packets in good order, in a cool place; you must judge yourself whether the weather will answer to ship or not; we do not think best to pay over 12½ c. for butter, unless for some prime dairies, in which case you may pay 14 c. and cheese 5 to 7; we think you may do something West in the butter, and perhaps you had better attend to it soon; we have now a good supply of butter on hand; please keep us well informed of your operations. Respectfully, yours,

S. & D.

BOSTON, *July* 25, 1836.

Mr. ORLIN ROOD:

DEAR SIR: We have to-day received the 103 kegs butter, shipped among a lot of grain, and damaged. We find the weight of our but-

ter falls short 2 to 3 lbs. per keg. We think this more than should be; hope you will pay strict attention to weight and tare. We think you had better take a favorable opportunity, and ship what you have on hand. The first lot we received was rather poor, and white in part, and not a very favorable purchase; the last lot we think might have been good when shipped. You may continue to purchase the best dairy butter, to deliver in the fall, at 15c., without pay for the packages; we should not think best to pay over 7c. for cheese, unless for large and superior dairies, at 7½c. We wish you to send, as fast as you ship your butter, a regular invoice of the weights of each package, so that we may compare on arrival. We have paid the account to Josiah Stickney, for Messrs. C. M. Huntingdon & Co., for 6826, the 22d. We think you will do well to take a trip over the lake as soon as you can leave.

Respectfully, yours, S. & D.

BOSTON, *August* 24, 1836.

Mr. ORLIN ROOD:

DEAR SIR: Since writing you we have received yours of the 15th, with invoice butter. We have received a letter from Mr. Dean, at Utica, N. Y., and we find that considerable excitement prevails in the butter and cheese trade, and we think that you will do well to pick up what you can in your vicinity at 14 to 16c. for butter, and 6 to 8c. for cheese; and if you can buy Jones' and his neighbors' that you may think better than his, it may answer to pay a shade over 8c., say ¼ or ½, if you are obliged to. We have accepted a draft at 60 days for $2,000. We think you had better be busy a short time, for the day will soon be over. Please write us on the receipt of this, and let us know how you get along; we think you had better keep the balance of butter on hand for the present.

Respectfully, yours, S. & D.

BOSTON, *Sept.* 9, 1836.

Mr. ORLIN ROOD:

DEAR SIR: Your favor of the 5th is received, and we hope you have taken proper care in selecting quality of butter in your purchases, for the dairies held at 16c. may be better worth the price than those you have bought at 15; but this we cannot know until we see them. We think your purchases may turn to good account if well managed through, but the labor will be to pay for them. We can, undoubtedly, do considerable towards that, but our produce account will be heavy. Mr. Dean is purchasing west, and we think you had better stay your hand for the present, unless you can take good bargains, and this butter and cheese must not be moved in the warm weather much faster than we want it to use; we had rather pay for keeping. We hope you will take care and get good weight, and see that the tares are right. We shall be glad if you can make arrangements with your banks to draw for a part of the funds on 60 to 90 days, for we think we shall have to look sharp for what we shall want here; it will undoubtedly be an ob-

ject for them to have you circulate their money, and we shall endeavor to manage so as to meet the amounts as they come; please give us an estimate of the amount you have probably bought of both butter and cheese; we think we could select dairies ourselves worth 16c., and even more, but they are not common. We hope you will, in your contracts, make sure of the fall made butter, and no matter about the fall cheese, if it can be left; we shall write you again soon.

Respectfully, yours, S. & D.

BOSTON, *Sept.* 14, 1836.

Mr. ORLIN ROOD:

DEAR SIR: Since we received yours of the 5th we have written you at Burlington, which we presume you have received. We have had a letter from Mr. Dean, and he is making some progress. We made mention of obtaining money from your bank; but we find that our banks here will probably be willing to have us take their paper, and have you circulate it; and we think this will be better for us, unless your bank will take 4 mo. drafts, and then, perhaps, so. Please inform us on this point. We hope you will pay strict attention to the quality, and get all the fall butter you can. You may continue your purchases when you can buy good bargains, and at former rates, say not over 16 for butter and 8 for cheese. Please inform us on receipt of this particularly.

Respectfully, yours, S. & D.

BOSTON, *Sept.* 17, 1836.

Mr. ORLIN ROOD:

DEAR SIR: Since we wrote you we find ourselves in want of some butter, and we think you had better forward us by the most expeditious conveyance a quantity of butter, and, if convenient, a small amount of cheese; perhaps you can get it along sooner to send it direct to New York than to Albany. We are in immediate want, and we think you had better stop your purchases of cheese, and confine yourself to butter; and, should it be necessary, you may, for superior quality dairy butter, pay 18c. We think one of us will see you in the course of 10 days. Please keep us informed of your proceedings; hope you have made your contracts so that they will all hold.

Respectfully, yours, S. & D.

BOSTON, *September* 21, 1836.

Mr. ORLIN ROOD:

DEAR SIR: We send you by the bearer, Mr. Eben Burgess, six thousand and five hundred dollars; the market bank bills we have agreed to keep out six months, and you must pay them away when they will not go direct into the bank, and if you can make some arrangement with your bank to take what they receive and pay them away again. We wrote you a day or two since to ship us some butter, which we presume you will attend to. We should prefer taking your money if they would give us 4 and 6 months time on the drafts, and we think they had better do

so. You see that all the bills are all marked O R with red ink. If you can make any farther purchase of butter, you may contract at former prices. We think we have as much cheese as we shall need, unless you can buy them low; please write us by the bearer if you can, he will be at Burlington over Sunday, and send a receipt for the money.

Respectfully, yours, S. & D.

BOSTON, *September 22d*, 1836.

Mr. ORLIN ROOD:

DEAR SIR: We wrote you yesterday by mail, intended for the bearer of this, Mr. E. Burgess, but was thrown into the post office with other letters by mistake. We send $6,500 which please pay, when it will not come back again, for we have agreed to keep it out of the bank. The other letter will be at the centre office. Please keep us informed, and have all the cheese packed in cool dry weather, as they will keep much better.

Respectfully, yours, STICKNEY & DEAN.

BOSTON, *September* 24, 1836.

Mr. ORLIN ROOD:

DEAR SIR: Your favor of the 20th is received, and thus far we think we shall not object to your purchases as advised. We have sent you as advised sixty-five hundred dollars [by Mr. E. Burgess,] which may not reach you before this. We think [it] best for you to take another trip over the lake, if you think you can pick up some more prime dairy butter at 16 to 18 c.; and prime cheese at 6 to 8 c.

Concerning funds, we have no objections to your obtaining it from your bank, but we think they ought to take longer paper for the privilege of circulating their money, say 4 and 6 months. We can do as well as that here; if you can give the money a good circulation, we think you had better take hold of what prime butter you can in preference to cheese; but take what you can of both until you are obliged to begin to ship; but be sure and fulfil all your contracts, and make them so there will be no backing out. What can be done in Canada for butter; if a quantity of good can be got out, say at 16 to 18, we would try the luck at that.

Think we shall not be able to leave this fall, unless it should be absolutely necessary. We are now selling butter at 18 to 25; cheese 8 to 10½; butter quick sale; money scarce. You do not mention the dairies you buy. Have you bought Jones' and others? In case you go across the lake again, we wish you to keep a separate account of your purchases, both butter and cheese, and mark it separately, both butter and cheese, so we can keep a distinct account of it all. Will write you as often as occasion requires. S. & D.

BOSTON, *October* 1, 1836.

Mr. ORLIN ROOD:

DEAR SIR: Since we wrote you we have sold out our butter, and wish you to forward us as fast as you think the weather favorable, say

one, two, or three hundred packages at a time; also a few cheese. [The cheese] should all be packed in cool dry weather, they will keep in much better order. Your brother has called on us, and we think we shall send you some more money by him, unless your bank will take longer paper, say 4 or 6 months. We find butter much wanted, and we are selling dairy 20 to 25; cheese 8 to 10½. Hope you will take proper care in forwarding and marking, with each cask numbered, and marked with the dairy mark through the whole.

We want some prime dairy butter most, but do not wish it shipped so soon as to risk the quality much on account of the weather; if you can send some along to New York more safe, we do not care which way it comes; it is sometimes kept too long on board the Albany vessels; please manage as well as you can.

Yours, S. & D.

BOSTON, *October* 11, 1836.

Mr. ORLIN ROOD:

DEAR SIR: We are in want of butter and cheese very much; we wish you to forward all you have purchased as fast as possible.

We wish to be on the safe side; the prospect looks fair for an early winter. We should like to have you purchase Jones's dairy, if it can be bought at a reasonable price, say not to cost over 9c., delivered at Burlington. We wish you to make some arrangements with your banks to give us 60 or 90 days, and even four months, if you can—please write us on receipt of this, [and inform us] what the prospect is.

Respectfully, yours, S. & D.

BOSTON, *October* 14*th*, 1836.

Mr. ORLIN ROOD:

DEAR SIR: We wrote you on the 11th, which you have probably received before this. Our Mr. D. then requested you to make arrangements with your banks to draw 60 or 90 days, but if you have not done so, we should wish you to draw on no less time than four months; we can obtain the money here as well or better; we shall, we think, send you some more money the 20th; we hope you will endeavor to keep the Market Bank bills with you as long as possible, as we shall be obliged to redeem them when they return; the others we do not care about; hope you will ship us fast as you can, and give us your account of every lot as fast as you ship, so that we can know what there is, and compare the account on arrival, and obtain insurance for all; [be sure that you send along your account.]

Respectfully, yours, S. &. D.

BOSTON, *October* 19, 1836.

Mr. OLIVER ROOD:

DEAR SIR: Yours of the 13th and 15th are at hand, also your draft of the 13th for ten thousand dollars [at sight] have been received, rather close shooting too, but we think it will not quite kill us; we are glad to receive some account of your proceedings which we have been with-

out for some time. We have been wanting some of the butter and cheese for a fortnight past, and have been obliged to buy from day to day here, and pay cash, and we find it rather hard work to supply our trade in this way; if you want money, say when, and how much, and we will send it; we intend to send you some to meet your payment the 27th. We are selling butter 20 to 27, and cheese 9 to 11 for good. We will write you again when we send you the money. We think if you can purchase more prime fall butter over the lake at 18 to 20, you may purchase further, but keep your account separate, and mark it so that we can find it; we wish you to send the balance of the goods to Gay & Willard, Albany.

S. & D.

BOSTON, *October* 21, 1836.

Mr. OLIVER ROOD:

DEAR SIR: We send by the bearer, E. A. Searle, $6000, which please pay so that it will stay as long as may be, $900 of the Market bills have returned, and we send them back again, should you need more please draw on us as long a time as you can. We hope you will lose no time in forwarding the butter and cheese as fast as you can. We fear you are too late in shipping now, and we should rather pay double [or treble] freight than have it frozen up. If any steamboat run from Ogdensburg to Oswego, we [should] think it best to put it on board one, and if it can come any faster send a man with it. Mr. Searle will, if necessary, stay and assist you in forwarding; we have paid the $10,000 to day, but money is hard and we intended sending more, but were disappointed; we are much in want of the butter and cheese, and could have sold most of it before this; the market is good, and we hope will remain so.

Respectfully, yours, S. & D.

BOSTON, *October* 29, 1836.

Mr. ORLIN ROOD:

DEAR SIR: We wish you not to purchase any more produce for our account, and lose no time in forwarding [all that] you have bought. We anticipate an early winter, and wish by all means to avoid having any left behind. We find our butter and cheese too late for our fall trade, and we shall probably have to winter more of it than we wish to; you will please write us on receipt of this. We presume you have received the $6000 sent by Mr. Searle on the 22d, but we have not heard from it as yet.

Respectfully, yours, S. & D.

BOSTON, *November* 1, 1836.

Mr. ORLIN ROOD:

DEAR SIR: We have received nothing from you since your return from Ogdensburg; some of our cheese begin to come in, but we find it quite too late; it would have been say $3000 better to have had it

three weeks sooner; we find ourselves entirely used up for money, and none to be had at any rate from the banks, and worth 2 per cent. per month. We wish you to purchase no more for our account, and if you can sell any or all that is not shipped, at the cost or a profit, you had better do so. Wish you to lose no time in closing up the business immediately; wish you to sell, if you can, as we find it cannot come through so late.

Respectfully, yours, S. & D.

Mr. ORLIN ROOD: BOSTON, *November* 8, 1836.

DEAR SIR: Yours of the 4th and draft for $5000 is received; this was quite unexpected to us, and we have received but little of our produce, and have used ourselves entirely up for money, and if possible you must help us to meet. Our produce is so late that we cannot realize from it, and it is imprudent to buy so large an amount without sending some along to sell, and we hope you will sell a quantity, or go down to Albany or New York and sell it, and remit to us so that we can pay the draft. Money cannot be had at less than 2 per cent. per month, and we cannot obtain security to buy it. You will please use all means you can to dispose of some at cost, or as you can do best, and remit or bring to us. We think it imprudent to purchase so late, that way, we fear, it will not come through. Please write us on receipt of this, and buy no more for us.

Yours, S. & D.

Mr. ORLIN ROOD: BOSTON, *Nov.* 14, 1836.

DEAR SIR: Yours of the 10th is received, and we presume you may have received ours of the 8th before this; we have ordered a lot of butter and cheese to New York for sales; but shall not [probably] be able to realize any thing from it to meet the draft of $5,000; and, if you cannot dispose of any butter and cheese that you may have on hand, we think you had better draw another draft on as long time as [you can] possible, and send [it] us to meet this in part. Mr. Dean has just returned from Albany, and finds about 1,800 casks cheese, 900 packages butter there, and on the way home; 209 of cheese, and about 300 of butter, in the Grecian, perhaps this side of New York. We are selling cheese 9 to 11c; butter, 20 to 25. Butter has declined about 3c. We hope to get through the payments, and get some of the stuff to sell, soon. Hope you will not be obliged to draw for any more [to pay] for the remainder until we can sell some of it. Money is extremely scarce, 2 to 2½ pr. ct. pr. month. Have no cheese on hand, and no good butter.

Respectfully, S. & D.

Schedule B.—(Copy.)

April 29th, 1836.

Mr. STICKNEY:

DEAR SIR: I arrived at home three days after I left your place, and found all well. I went to see Mr. Bradley, and learn the fate of the

Canada butter, and found it could not be got without it would do; they agreed to send a part, or all, of it to you to sell; if it is now on the way from St. John's to Whitehall, I think it will be through the canal the first boat.

As to the contracts for cheese, we shall be able to do the whole in this vicinity; as money is getting hard here, the farmers will be more willing to sell than they have been.

As to the butter, I am getting what is made here at 14 cts.; shall ship you a lot next month.

Yours, truly,

Signed, ORLIN ROOD.

(Half sheet, no postmark.)

Copy.

June 18th, 1836.

Messrs. STICKNEY & DEAN:

DEAR SIRS: I received yours of 11th inst. with pleasure. I can only say, in reply to your letter, I am sorry that I have not been able to ship you a lot of butter previous to this time. When I got home, I found nothing in readiness to ship as I expected, and as they agreed. I have been at work as fast as I could; have got a lot ready to start to-morrow evening. The exact amount I do not know, as there is considerable of it that is to come in and be weighed to-morrow. I think about 8 or 10 thousand, perhaps more; when it is ready, I shall forward it with all possible despatch, and go with it as far as I think is for your interest. As soon as I return, I shall forward you a bill of the whole, with a statement of what I have advanced. And shall be under the necessity of drawing on you for some funds by the first of next month. I will say to you at this time, the other [men] interested in your business *is* not disposed to do anything about the business. I had an interview with them yesterday, and have effected an arrangement with them, in which they have agreed to give up the business to me entirely, which I have agreed to take it off their hands, if you will consent.

They are to give me a bond that they will not purchase the article of butter, nor cheese, the present year at all.

If you consent to this arrangement, I believe I can do the business to your satisfaction. Please to answer this by first mail.

Yours, respectfully,

(Signed,) ORLIN ROOD.

Postmarked: Burlington, June 21st.

Copy.

June 27th, 1836.

Messrs. STICKNEY & DEAN:

DEAR SIRS: I have shipt you 8708 lbs. of butter in 125 tubs, 594 lbs. cheese in 4 casks. The butter was bought in 27 different lots, as you will see by the different bills I have taken from the various indi-

viduals that I bought the butter of, which will be rendered you on settlement; as to price, I have paid 14 cts. and furnished the firkins, and carted it, or paid for it at 15 cts. without charge for firkins or transportation, except some tolls in Addison county which was engaged early, and at higher prices, by the other party, but I thought it best to take it at 17 cents, as there *is* large dairies of cheese that is to be had at moderate prices.

The amount of money paid for the lot I have shipped is 1,450, or a little over, including my expenses to Albany, which was 14 50; I have advanced aside from the lot sent on about $700.00, and am still contracting and making small advances almost every day. I shall be obliged to draw on you soon for the money advanced, as I shall want it to pay for a lot that I expect to forward to you next week.

I have not been West; [I think] it not best to go until I can get an answer to my last, and close with Mr. F. and B. In the intermediate time I shall forward you what more I could get, which will be nearly all I shall be able to get here until fall, then I shall be ready to go West. I do what I can which I think will be considerable according to the best information I can get. Please to write often. Yours, respectfully,

(Signed) ORLIN ROOD.

Postmarked: Burlington, June 29th.

Copy.

July 4th, 1836.

Messrs. Stickney & Dean:

Dear sirs: I received yours of the 25th inst. with pleasure; in answer say, there is nothing of importance occurred since I wrote to you last; after I sent your last letter I drew on you for $2,000.00 at 30 days; I shall ship you a lot on the 6th inst., of 6 or 8 thousand pounds, and shall be obliged to draw for more funds; this lot will come less price than the other; there is from 15 to 20 dairies in this section that I can obtain at 7½ cts., on condition that you will allow me to take from 15 to 18 cheeses from each place soon, that is in this month; also from 2 to 4 tons of butter, which they will not sell less than 16½ delivered at the lake; it is all from the best dairies in this section; but as I did not know your views, I declined doing any thing on the subject until I hear from you, which I hope will be by first mail. Yours, in haste,

(Signed) ORLIN ROOD.

P. S. Please to direct your answer to Richmond, Vt.

Postmarked: Waterbury, 6th July.

Copy.

July 7th, 1836.

Mess. Stickney & Dean:

Dear sirs: I shipped you, on the 6th inst., one hundred and three firkins containing 7391 lbs. of butter, costing as per bill receipted,

$1,111 82 cts. I went with it as far as Whitehall to see all from there safe; thought it not best to go farther; I have given a draft on you of 2,000 more, dated July 5th, which will enable me to pay for a lot that I shall ship you in 6 or 8 days from this, unless otherwise directed by you; I have made the arrangement with Mess. Fallett and Bradleys I wrote to you about, but have not got their account in full as yet, but shall get it in a few days; will then give you a statement in full of all they have done; please to write often and let me know the state of the market. Your obedient servant,

(Signed) ORLIN ROOD.

Postmarked: Jericho, Vt., July 11th.

Copy.

July 12th, 1836.

Messrs. STICKNEY & DEAN:

DEAR SIRS: I received yours of the 9th this evening, as to the forwarding of butter this weather; the lot that I sent last week I did not allow it to be moved only in the night, by that means it was in good order when I left it. I hope it will arrive safe and as good as I left it, if it does I am sure you will not find it a hard trade; as to more butter I have contracted a lot at from 14 to 15 which I was to ship next week, but I shall leave it entirely at your option, but think it may be so arranged as to go safe.

With regard to contracting on last year's prices, I am not paying more than I did last year for butter or cheese; 7 is the extent I have paid for cheese; a good deal bought for less. As to butter, I am satisfied to pay not over 12½ if you think that is best; it was not that price last year after the 15th of June.

There is as many buyers this year as last, perhaps more, but they are not wishing to interfere with me, although they are paying higher than I am.

I received your letter of the 4th inst. I was at Hinesburgh yesterday, in order to purchase butter, but found a man from York paying from 16 to 18; agreed with him that I would not interfere if he would not come up our way; so we parted, each going his own way.

I think if the business is managed prudently, that the price of butter will not, for the season, average as high as it did last year. As to the western tour, I have made up my mind, after I have shipped my next lot, I should start, believing I could do something to profit. Please to answer this by first opportunity. I shall wait your answer, expecting you will direct what course I shall pursue as to forwarding what I have on hand. I shall follow your directions as to further purchases, but think, if you will still conclude to confine me to 12½ on butter, it will be the means of throwing it all into other men's hands; but of this you will decide, and I shall follow your directions.

Yours, respectfully,

(Signed) ORLIN ROOD.

P. S I purchased a lot of butter of Mess. C. H. Huntington & Co.; they wish me to get you to pay a bill of nearly 70 dollars to Josiah Stickney, which they owe him, and forward his receipt, and charge the same to my account. It will be all right if agreeable to you.

Yours,

(Signed) O. ROOD.

Postmarked: Richmond, Vt., July 13th.

Copy.

Mess. STICKNEY & DEAN: *August 4th*, 1836.

DEAR SIRS: I *shipt* you from Burlington, July 28th, 162 firkins of butter. I went with it as far as Albany, and *see* it on board the packet in good order, and a favorable time to get down with it; hope it will arrive in good condition. Your letter of the 25th of July, is duly received; agreeable to your request, I shall forward an invoice of the article I have *shipt*, together with Mess. Fallett and Bradleys' acct. early next week, at which time I shall start for the west, believing that I can do considerable in way of butter, to good advantage. Yours, in haste,

(Signed) ORLIN ROOD.

Postmarked: Essex, Vt., August 6th.

GENTLEMEN: Enclosed you have an invoice of what I shipped you 28th of July, with all the cost and my expenses to Albany added, which I believe is correct, as you will see by bills herewith. I shall forward the remainder by next mail. I shall start for the west as soon as I arrange the lots of butter I told you about at the north, which will be in 2 or 3 days; shall be obliged to give draft on you for some money before I start. You will write me at East Stockholm, N. Y., if any thing takes place with you. Yours, &c.

(Signed) ORLIN ROOD.

Messrs. STICKNEY & DEAN,
August 10th, 1836.

The above with invoice of 162 firkins butter, amt. to $1610 92.

Postmarked: Richmond, Vt., August 12.

Messrs. STICKNEY & DEAN: *August 15th*, 1836.

DEAR SIRS: Enclosed you have the balance of what has been shipped to you, except Fallett and Bradleys' acct., and a lot of G. S. Hale; I should have sent that, but on examining their acct. as handed to me, I find some mistakes, which when rectified I shall send it on.

I have made some purchases of butter, I believe, since I saw you, and shall be obliged to draw on you at 60 days for 2,000 dollars, to pay here, and to go west with; nothing new since you left. The Yorkers are on hand for cheese, are trying to get the large dairies, but I think they

(Not signed.)

The above, with invoice of butter, amt. $2,565 26.

Postmarked: Burlington, Vt., Aug. 18.

September 3d, 1836.

Messrs. STICKNEY & DEAN:

DEAR SIRS: Agreeably to arrangements when you *was* here, after I had finished some business which was then on hand, I started for the west, and have been in Clinton, Franklin, and St. Lawrence counties, in order to see what I could do in butter and cheese. I find there is some good butter, and but little cheese of good quality. As to butter, I have contracted for some, to be delivered at Plattsburgh from Malone, one ton at 14 cents per pound, three more at 14½ do., and 4 or 5 tons cheese at 7 cents, without any charge, except for casks. I have also bought from 4 to 8 tons in Stockholm, of butter and cheese, delivered as above; butter at 14, cheese at 7 cents in boxes. I have a lot of dairy butter of Scotch make, for which I am to pay 14½ cents, delivering from 3 to 5 tons in Hopkington. I have bought a lot of cheese at 7½, butter at 14½; no charge for casks or casting in.

I have 2 tons of dairy butter, I believe, at 15 cents, in Potsdam. I have bought some first rate dairies of butter and cheese; butter delivered at Ogdensburgh at 15½, cheese, a few dairies, at 8 cents, the rest at 7, without any other charges. From thence I went to Madrid, where I found a Scotch settlement of heavy farmers, which held from one to two thousand tubs of butter of their own make. I bought what I could at 14 to 15 cents, many of them are stiff at 16 cents; I agreed to see them again in two weeks. From thence I went to Fort Covington, which is on Salmon river; I there bought from one to three hundred tubs from the settlement I told you of, at 15 cents, where it is, and contracted for the delivery, not [to] exceed ½ cent.

I am now on my way home, and take this first leisure moment on board the boat to inform you what I have done; knowing that I have, in some cases, exceeded my limits, but have at all times acted, as far as I could judge, strictly for your interest, and shall leave it with you to sanction my doing so or not, as you think best. If it will answer your purpose, I can get four or five hundred tubs more at Madrid, at 16 cents; of this you will decide, and let me know by first mail. Please to direct your letter to Burlington; I can get it one or two days sooner than at our office. You said something on the subject of funds; if you conclude to sanction my western trades, I can furnish from six to ten thousand dollars on six months, as we talked; I can get enough more to pay the whole of the western purchases at three months. If you wish, write the whole story without delay, and oblige

Your obedient servant,

Signed, ORLIN ROOD.

P. S. I forgot to say that I have bought the large dairies in Richmond and Shelden, a few of which I have paid 8 cents for; the rest from 7 to 7½. I did not receive any letter from you at the west; conclude, of course, the market about the same as when I saw you.

Yours,

Signed, ORLIN ROOD.

I shall start for the west, by agreement, the 12th of this month; hope to hear from you before I go.

September 5.

DEAR SIRS: You will see, by the within sheet, what I have done west. When I got home I found your letter of August 24; from its contents I conclude you sanction my trades. In view of your letter, I shall start to go back at three in the morning, to get what news I can of the butter. I gave a draft on you to Lyman & Smith for 3,500 *hundred* dollars, at 60 days, which is to pay them for butter and cheese I have bought of them. I must take with me nigh 4,000 *thousand*, for which I have given the bank a draft for 2,000 in three months; my note for the rest at three months. When I return I will write you all about what I have done. Yours,

Signed, ORLIN ROOD.

Postmarked: Richmond, Vt., Sept. 5.

September 12*th*, 1836.

Messrs. STICKNEY & DEAN:

DEAR SIRS: You have, I presume, received my letter of last week, which gave some account of my western tour. I started on Monday; at evening found myself 80 miles from home. I made some more contracts for butter, and found that most of the contracts *that* I had made would be fulfilled. I think that I shall get from ten to fifteen hundred tubs, which will make from forty to fifty tons.

I have paid out on contracts, or rather for butter which is ready for delivery, 6,000 dollars, and must send 1,000 more to-morrow; and such are my engagements on cheese and butter here, and such is the condition of our bank, that I am obliged to give a draft on you for three thousand dollars, at sixty days, which will answer for present use. I shall now look around and see what is the probable amount of cheese, which I think, from what I can calculate, will be from 150 to 200 tons; which you will see from a little cost will cost a good deal of cash. You will please to write me what is the prospect of business, and what arrangements you want I should, if I can, make, and much oblige

Your obedient servant,

Signed, ORLIN ROOD.

Postmarked: Burlington, Sept. 13.

September 14*th*, 1836.

Mess. STICKNEY & DEAN:

SIRS: Your favor of the 9th is received. As to the western purchases I have endeavored to be very cautious in contracting as to quality, so as to have it go in good order, and be a good article. I wrote you the day after I returned from the west, giving an estimate of what I thought there would be in my contracts. On further examination, I think it will not fall below what I account it at. I can make such arrangement with our bank for funds, so as to accommodate you in good shape. The Yorkers are wide awake in this section; I have been applied to

for all I have bought for you, but I shall forward all I have and all I do get to you, feeling satisfied my purchases will be good ones, in view of price that is open here now; but the day is over for this year with regard to fall butter. I fear that we shall not make but little, compared with other years; our fall feed is spoilt with the drought; the meadows look as bad as summer pasture in October; but still hope we may get some feed yet. I have given Tower, Oake & Dixon a draft for 2,000, on 60 days, on account of butter and cheese.

I will make further estimate on quantity, and let you know in my next. Write often; tell the state of the market.

Yours, truly,

Signed, ORLIN ROOD.

Postmarked: Burlington, Sept. 15.

September 20th, 1836.

Mess. STICKNEY & DEAN:

DEAR SIRS: Yours of the 14th is at hand; in answer would say, the weather is very hot; so, reason that I have not put up my cheese. To-day it is much cooler, so much so that I think of doing something soon; as to money, I have arranged with the bank, with the exception of five or six thousand dollars. They will accept of drafts three months, except ten thousand dollars. They will take my note for three months, and then a draft on you for three months more. If you choose to circulate your money, I have no objections. I am under no obligation to the bank, except I have said to them I expected you would do your business in that way, for the reason—the door is open for you to take any other course you think best—I am under obligations to pay for some heavy lots of butter and cheese this week; for the which I have given the bank a draft for $3,000 three months. I shall have to give a draft next week, for some more, which will be of the five thousand dollars, which is to be drafts of thirty days. You will see by this what arrangement I have made. I have tried to make such an one as would be for your interest. You can alter any part of it you choose by furnishing your money to supply the place. As to purchases, I am buying what I can within your limits, and in some cases exceed them; of which I will mention one dairy of butter and cheese. The cheese I could have at 8 cents; the butter at 18 cents; both kept by one man. I bought the whole; think it a good purchase. 5 tons of cheese, 2 of butter. I was well aware I was above my limits, but I think the trade so good a one for you that I have refused a large advance on the lot; but still know you are under no obligation to take it unless you think best. Write often, and much oblige your obedient servant,

Signed ORLIN ROOD.

P. S. Direct your letters to Jericho in future, as it will accommodate me better, in view of the changes that *has* taken place here.

Yours,

Signed, O. ROOD.

Postmarked: Richmond, Vt., Sept. 22.

Copy.

September 26th, 1836.

Mess. STICKNEY & DEAN:

Yours of 17th is at hand. As to butter, I will ship a lot on the 27th inst., of 8 or 10 thousand. I shall forward it to Hews, Godfrey and Robinson, of New York, to forward to you as you may direct.

As to purchases, I am doing what I can in the purchase of butter, and shall stop buying.

I have not cashed any of the large dairies, but commence to-morrow morning. Such is the money market here, I have been obliged to give a draft for $5,000 on you, at ten days, to raise money to meet my engagements.

The next I shall want is to come as I last wrote you. I shall start for the west the 29th, shall return October 6th. Should be glad to see one of you here, if convenient, before I go, or after I return. Nothing new since I wrote last.

I shall ship from Plattsburg, October 5th, from 20 to 30 thousand of butter, with 6 or 7 tons of cheese. Shall write you again previous.

Yours, in haste,

(Signed) ORLIN ROOD.

No postmark.

Copy.

September 29th, 1836, 9 *o'clock*, *P. M.*

Messrs. STICKNEY & DEAN:

DEAR SIRS: I have this moment received your letter, with the package containing $6,500 dollars. Sorry to find that it has remained in Mr. Bradley's hands a number of days. Shall give it a circulation.

I feel sorry it did not get to me in time to save that draft which I gave at 30 days. I shall use it previous to 17th of next month, at which time I shall want to pay for a large quantity in Franklin county. I will write again in a few days. Yours, in haste,

Signed, ORLIN ROOD.

P. S. My time is short, I expect the boat every moment to go west, to receive and pay for my butter over the lake. Yours,

(Signed) O. ROOD.

Postmarked: Burlington, Vt., Sept. 30th.

Copy.

Messrs. STICKNEY & DEAN: *October 13th*, 1836.

DEAR SIRS: I have waited until the last moment for the funds you wrote of sending, and have this moment given a draft on you for ten thousand dollars, or forfeit all I have paid, and all your butter and cheese in St. Alban, which is 5 tons of butter, and 30 to 40 of cheese. It is the hardest work to get over this day I ever saw; the rest I will the 15th. Yours, in haste,

(Signed) O. ROOD.

Postmarked: Burlington, Vt., Oct. 14th.

Copy.

October 16*th*, 1836.

Messrs. STICKNEY & DEAN:

DEAR SIRS: You have doubtless received mine of the 13th by this time. If you feel as much disturbed at receiving the notice of the draft of 10 thousand at sight, as I did in being forced to give it, you will wish the bank and all its contents burnt. It was, as I wrote, the only way I could do. I will tell you more of this hereafter. I shipped you, the day after I wrote you from Burlington, 95 firkins of butter, making 7372½ lbs. It was shipped to Hews, Godfrey & Robinson, of N. Y., to forward direct to you.

I ship[ped] from Plattsburg, the 5th inst., 180 large firkins, and 3 barrels. The number of pounds I do not know, for there was one load on my invoice that did [not] arrive in time to ship with the rest. There is a number of contracts which were due the 5th at Plattsburg, which they did not fulfil, which, I think, without fail, will be in time to ship the 27th instant, which is the time set for my next shipment from that place. I likewise shipped 71 casks of cheese from the above place. I returned from St. Alban's last evening, from which place I have shipped for you 339 casks of cheese, 73,937½ lbs., cost $5912.65 cts.; 135 firkins of butter, 10,306 lbs., cost $1892.75. Shall ship from Burlington from 50 to 60 tons to-morrow. My contract for butter at the West is to be fulfilled on the 27th inst. They amount to over 25 tons, if they come in, which I think they will. With regard to money, I will do the best with the bank I can, and let you know what I can do in my next.

(Signed) Yours, in haste, ORLIN ROOD.

Postmarked: Richmond, Vt., Oct. 17th.

P. S. I think it bad business for you that you agreed with Mr. Hoogly to buy cheese; he has done all he could here, and has raised great excitement, much to your injury as well as mine; but it is all over now.

(Signed) Yours, in haste, O. ROOD.

Copy.

Messrs. STICKNEY & DEAN: *October* 19*th*, 1836.

DEAR SIRS: Yours of the 14th is at hand. With regard to funds, you have probably received my 2 last, saying what I was forced to do with regard to funds. In future the bank here will not agree to do any thing any better than they have done. As to giving a draft in that way I shall not, unless you direct. I shall get some funds from another source, on my own account, to get along with until you can send some from your place. I have shipped, since I wrote you last from Burlington, 363 casks of cheese. As to sending you the exact amount I cannot. The vessel did not take half of the cheese or any of the butter. The agreement is, the balance is to go to-morrow, and all there is at St. Alban's on Wednesday, at which time I shall write you again. You will be particular in seeing that you get the number of casks weighed that I forward, so that the whole can be made right when I go down next month. Yours, in haste,

(Signed) ORLIN ROOD.

Postmarked: Jericho, Vt., Oct. 22d.

Copy.

BURLINGTON, *Nov. 4th*, 1836,
12 *o'clock at night.*

Messrs. STICKNEY & DEAN:

DEAR SIRS: You will excuse my liberty this evening. I have only time to say, since Mr. Searle left, I have bought from 20 to 30 thousand of butter in addition to my purchases when he was here, and all of it will be shipped by the 7th of this month. I am now on my return from Plattsburg, from which port I have shipped for you, by steamboat, 64 firkins and 11 barrels of butter, near to 10 thousand pounds. I have some more to ship from the above place the 10th instant, which closes all up the west side of the lake. I have now in this place, which is to be shipped to-morrow, a full load for a vessel. Shall endeavor to close all up by the 10th without fail. I shall be obliged to draw on you for 5 thousand dollars, which I hope will close up, but think it doubtful. I shall write you again the 9th inst.

Yours, in haste,

(Signed) ORLIN ROOD.

Postmarked: Burlington, Nov. 5th.

Copy.

BURLINGTON, *Nov. 10th*, 1836.

Messrs. STICKNEY & DEAN:

DEAR SIRS: Yours of the 1st instant arrived on the 7th. I can merely answer it in few words. I had closed my purchases before it arrived. You express great fear as to my perseverance in getting your stuff shipped in season, the whole of which I think is unnecessary. I have shipped, in addition to my last advices, before I received your last, 414 casks of cheese [and] 293 firkins of butter from this place, [and] 168 do. from St. Alban's, making 461 of butter, being the half of what I have to ship. The balance will all be off in time.

You say your loss is $3,000 in not having your butter and cheese shipped three weeks sooner. For this I am very sorry; but I think if you look to your order of Sept. 15th, you will see it is not my fault. I shall see the whole off and down to Albany before I go on. As to funds, I shall want more—how much I cannot tell until Saturday. Shall be obliged to draw on you—I fear on short time. I shall write again soon.

Yours, in haste,

(Signed) ORLIN ROOD.

P. S. I was sorry your orders for me to sell did not arrive in time for me to sell 300 or 400 splendid tubs of dairy butter, but it is too late, so you will have it in your market. I think you will be pleased with it.

Yours,

(Signed) O. ROOD.

Postmarked: Burlington, Vt., Nov. 11th.

301.

Copy.

BURLINGTON, *Nov. 14th*, 1836.

Mess. STICKNEY & DEAN:

DEAR SIRS: I have shipt all of your butter and cheese—the last R. I. dairy is yours; to-day I have been obliged in consequence of the death of T. Hickley, esq., cashier, to give a draft for $4000, 30 days, to raise money to close my contracts, in view of last letter. I was very sorry to draw, but it was the only way I could do. I shall send you by mail on the 18th inst., the whole amount of my purchases for the season, both of butter and cheese.

I shall start in 3 or 4 days for your place, shall go by the way of New York, to see that the whole is through the canal. More in my next.

Yours, in haste,

(Signed) ORLIN ROOD.

Postmarked: Burlington, Nov'r 15th.

Copy.

November 15th, 1836.

Mess. STICKNEY & DEAN:

DEAR SIRS: Since I received yours last evening, I have been looking about [for] funds; have got some encouragement for some, but not certain. I have closed up all my purchases, and shipt the whole in good order; it will all go without any trouble. I have to-day given Messrs. Weller a draft of nearly 2600 dollars on account of butter, at 60 days; it is a first rate lot, all of it from dairy butter. I thought it was best to take it; if you think not, please to accept the draft; I shall be on in time to meet it. I hope when I get to your place I can satisfy you that I have acted to order. At all events, I will make all right.

Yours, in haste,

(Signed) ORLIN ROOD.

Postmarked: Burlington, Vt., Nov. 17th.

Copy.

Mess. STICKNEY & DEAN:

DEAR SIRS: Agreeable to my promise, I will give you an ac't, as far as I can, of my purchases [and] shipments. My spring business shipping butter, aside from what was done with Follett & Bradley, was 26,667 [lbs. of] butter,

Which cost, as per bill receipted - - - -		$4,144.39
Butter this fall as above - -	82,639 lbs.	
Cheese as above - - -	363,491 do.	
Cost - - - - -		48,278.48
The butter and cheese on the west side of the lake cost as per bills - - - - - -		11,751.71
		$64,214.58

You will see by the bills the number of pounds. I have been so much in a hurry, I have had no time to do . It is as late as it will do to wait on account of the mail. I have just given a sketch in order that you can see nearly as it stands. I shall start Monday by way of York, to see how it is, and shall be at your place as soon as I can.

Yours, in haste,

(Signed) ORLIN ROOD.

P. S. The above is the sum, if there is no mistake of the money paid out, except the interest on drafts and money that I have raised, which will be made right when I come. I have some paper nearly due; I shall give a draft on you on time to meet it, I expect 3 or 4 months, and shall bring [it] with me.

Yours,

(Signed) O. ROOD.

Postmarked: Jericho, Vt., Nov'r 19.

Copy.

FARMERS AND MECHANICS' BANK,
Burlington, March 9th, 1837.

GENTLEMEN: I enclose a copy of the assignment to this bank, of the claim of Orlin Rood against Stickney & Dean, and have to request that you will give them notice thereof.

As it is understood that Mess. Stickney & Dean are still desirous of having the above claim adjusted by references, I am instructed by your board of directors to say, that this bank will consent to have the business now in suit between Mr. Rood and Mess. Stickney & Dean referred to intelligent and disinterested persons; and in case Mess. S. & D. insist upon returning the "Jones" cheese and Weller butter, you will please receive it and have it placed in some safe house, to be disposed of to the best advantage for the benefit of this bank, and the proceeds deposited to its credit in the Market Bank.

I am, very respectfully,
Your obedient serv't,
C. F. WARNER, *Cashier*.

Mess. RAND & FISK, Boston.

A true copy:
(Signed) JOHN E. SHORT, *Attest*.

Messrs. STICKNEY & DEAN:

DEAR SIRS: Yours of the 4th is at hand. In answer, I can only say, that I have wrote you to-day saying what I had done, and the necessity of so doing. I entirely stopped my purchases some days before I received your order for so doing. You will see at once that I must fulfil my contracts, which I have made in good faith on your account, for the which I have given the draft, as I said in my last.

I will go to Albany and New York, and see what I can do. I am a stranger in these markets, especially among the butter and cheese

men. I think you had better go on yourself, in order to sell what you think best. The last draft must not be protested, for I have, according to your directions, raised ten thousand on my own note, with the agreement to give a draft on as long time as the note. If this draft is not accepted, it will prevent the bank giving me a draft on other paper. You say I was imprudent in buying so large and not forwarding early. As to that, I am sure you will not find fault with me if you will only look to your order in September, which was not to ship any thing to you until the weather was cooler; which, indeed, I promptly obeyed, although much to my disadvantage. As to the rest, I will explain it all to your satisfaction when I come.

Yours, in haste,

ORLIN ROOD.

Postmarked: Burlington, Nov. 15.

Schedule C.

MASSACHUSETTS DISTRICT, *ss:*

The President of the United States of America, to the marshal of our district of Massachusetts, or his deputy, greeting:

[SEAL.]

We command you to attach the goods or estate of William Stickney and Henry Dean, merchants and co-partners, using the name and firm of Stickney & Dean, both of the city of Boston, in our county of Suffolk, in our district of Massachusetts, and citizens of said district, to the value of fourteen thousand dollars, and for want thereof to take the bodies of the said Stickney & Dean, (if they may be found in your district,) and them safely keep, so that you have them before our judges of our circuit court of said United States for the first circuit, next to be holden at Boston, within and for our said district of Massachusetts, on the fifteenth day of May next, then and there, in our said court, to answer unto Orlin Rood, of Jericho, in the county of Chittenden, in the State of Vermont, one of the United States of America, yeoman, who is a yeoman of the said State of Vermont.

In a plea of the case, for that the said defendant, heretofore, to wit, on the 10th day of December, in the year of our Lord one thousand eight hundred and thirty-six, at Boston aforesaid, was indebted to the said plaintiff in the sum of ten thousand five hundred and four dollars and thirty-two cents, according to the account hereto annexed.

And also in the further sum of ten thousand dollars, for the work and labor, care, diligence, and attendance of the said plaintiff, before that time done, performed, and bestowed by the said plaintiff, as the agent of the said Stickney & Dean, in and about the buying and shipping of butter and cheese in and about the business of the said defendant, and for the said defendant, and at the special instance and request of the said defendants; and also in the further sum of ten thousand dollars, for divers goods, wares, and merchandise by the said plaintiff, before that time sold and delivered to the said defendant, and at the like special instance and request of the said defendant; and also in the further

sum of ten thousand dollars, for money by the said plaintiff, before that time lent and advanced to, and paid, laid out, and expended for the said defendant, and at the like special instance and request of the said defendants; and also in the further sum of ten thousand dollars, for other money by the said defendant before that time had and received, to and for the use of the said plaintiff; and also in the further sum of ten thousand dollars, for so much money before that time and then due and payable from the said defendant to the said plaintiff, for interest upon and for the forbearance of divers large sums of money before then lent and advanced by the said plaintiff to the said defendant, at the like special instance and request of the said defendant, and by the said plaintiff forborne to the said defendant, for divers long spaces of time before then elapsed, at the like special instance and request of the said defendant; and also for other money before that time and then due and payable from the said defendant to the said plaintiffs, for interest upon and for the forbearance of divers other large sums of money before then due and owing from the said defendant to the said plaintiff, and by the said plaintiff forborne to the said defendant, for divers long spaces of time before then elapsed, at the like special instance and request of the said defendant. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the 10th day of December, in the year of our Lord one thousand eight hundred and thirty-six, at said Boston, undertook, and then and there faithfully promised the said plaintiff, to pay him the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the ninth of December, in the year of our Lord one thousand eight hundred and thirty-six, at Boston aforesaid, accounted with the said plaintiff of and concerning divers other sums of money from the said defendant to the said plaintiff due and owing, and then in arrear and unpaid, and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiff in the further sum of ten thousand five hundred and four dollars thirty-two cents; and being so in arrear and indebted, the said defendant, afterwards, to wit, on the day and year last aforesaid, at said Boston, undertook, and then and there faithfully promised, to pay him the said last mentioned sum, when the said defendant should be thereunto afterwards requested.

And for that whereas, heretofore, to wit, on the fifth day of March, now last past, to wit, at Boston, in said district, by a certain agreement then and there made between the said Stickney and Dean of the one part, and the said plaintiff of the other part, it was agreed that the said plaintiff, as the agent of said Stickney and Dean in that behalf, should purchase all the butter and cheese he could buy in the county of Burlington, in the State of Vermont, from the fifth day of March last until the first day of November last, and deliver the same to said Stickney and Dean on board some vessel or vessels, at said Burlington, or some other port or ports on Lake Champlain; and that the said Stickney and Dean

should and would furnish funds for that purpose, from time to time, to the said plaintiff, when required so to do, and fulfil all contracts which should be made in the premises by the said plaintiff, and pay the said plaintiff for buying and shipping such butter one cent the pound, and for buying and shipping such cheese one-half cent the pound, and pay the actual cost of packages and freight thereof to the said lake, and pay six cents the cask for the storing of all such cheese as should be shipped at Burlington aforesaid, and three cents the keg for storing all such butter as should be shipped at said Burlington, and pay the actual costs of wharfage and storage of all such butter and cheese which should be shipped elsewhere, and instruct the said plaintiff from time to time what prices to pay for such butter and cheese; and in case the said plaintiff should exceed the limits of such instructions, the said Stickney and Dean were not to be bound to take such butter and cheese for which said plaintiff might give a higher price than he was instructed to pay therefor; but the said Stickney and Dean were to decide whether they would take such butter or cheese for which such higher prices should be given by the said plaintiff than he was authorized to do by his instructions from said Stickney and Dean, and notify the said plaintiff thereof before the property had been shipped; and the said plaintiff agreed to use due diligence in buying, and in all matters and things relative to the premises to act as the faithful agent of the said Stickney and Dean, and to keep them advised, from time to time, how much butter and cheese he had bought, and what prices he had paid therefor; and the said agreement having been made as aforesaid, afterwards, to wit, on the day and year aforesaid, at said Boston, in consideration thereof, and that the plaintiff had at the request of said Stickney and Dean undertaken to perform it on his part, the said Stickney and Dean then and there undertook and promised to perform the same on their part; and the plaintiff says, that after making of the said agreement, relying on the promises and undertaking of the said Stickney and Dean therein contained, and in performance thereof on his part, as agent of the said Stickney and Dean, did buy and ship on board vessels, at ports on said Lake Champlain, divers large quantities of butter, to wit, one hundred and fifty thousand pounds of butter, and divers large quantities of cheese, to wit, five hundred thousand pounds of cheese, at prices for which the said plaintiff was instructed to purchase, and expended in the purchase thereof divers large sums of money, in the whole amounting to a large sum of money, to wit, the sum of sixty-five thousand six hundred and ninety-six dollars and ninety-three cents, of the proper moneys of the said plaintiff, which the said Stickney and Dean, by virtue of the said agreement, undertook and promised, and were to furnish, reimburse, and pay to the said plaintiff on request; and in and about the making the said purchases, and the performing of the said agreement on the part of said plaintiff, a large sum of money, to wit, the sum [of] four thousand dollars, for commissions and services of the said plaintiff, became, and was, and is due, according to the said agreement; which said several sums, so due to the said plaintiffs, the said Stickney and Dean heretofore, to wit, at said Boston, to wit, on the

second day of December, instant, were requested by said plaintiff to reimburse and pay to the said plaintiff.

And for that whereas, heretofore, to wit, on the first day of June now last, to wit, at said Boston, in said district, by a certain agreement then and there made between the said Stickney and Dean of the one part, and the said plaintiff of the other part, it was agreed that the said plaintiff, as the agent of Stickney and Dean in that behalf, should purchase all the butter and cheese in the counties of Clinton and Saint Lawrence, in the State of New York, from that time to the first day of November, now last, and deliver the same to the said Stickney and Dean, on board some vessel or vessels, at some port or ports on said Lake Champlain; and that said Stickney and Dean should, and would, furnish funds for that purpose, from time to time, when required so to do, and fulfil all contracts which should be made by said plaintiff in the premises, and pay said plaintiff for buying and shipping such butter half a cent the pound, and for buying and shipping such cheese ½ cent per pound, and to pay actual cost of packages and freight of such butter and cheese to the said lake, and for storing said butter and cheese; and the said plaintiff agreed to use due diligence in buying, and in all things relative to the premises to act as the faithful agent of the said Stickney and Dean; and the said agreement having been made as aforesaid, afterwards, to wit, on the same day, to wit, at said Boston, in consideration that the said plaintiff had undertaken and promised to perform the same on his part, the said Stickney and Dean undertook, and then and there promised to perform, fulfil, and keep the same in all things on their part to be performed; and the said plaintiff in fact says, that confiding in the said agreement of the said Stickney and Dean, and as their agent, in pursuance of the said agreement, he did buy and ship divers large quantities of butter and cheese to the said Stickney and Dean, to wit, fifty thousand pounds of butter and thirty thousand pounds of cheese, and therein expended of the proper moneys of the said plaintiff divers large sums of money, amounting in the whole to a large sum of money, to wit, twelve thousand dollars, which the said Stickney and Dean, by virtue of the said agreement, were to furnish, reimburse, and pay to the said plaintiff on request, and in and about the business aforesaid, a large sum of money, to wit, the sum of four hundred dollars, became, and was, and is due to the said plaintiff for commissions and services, according to the said agreement; which said several sums being due, as aforesaid, the said Stickney and Dean were heretofore, to wit, on the second day of December, instant, to wit, at said Boston, requested by the said plaintiff to pay to him.

And whereas, also, at said Boston, heretofore, to wit, on the first day of April now last, the said defendants, in consideration that the said plaintiff had agreed to draw divers bills of exchange on the said defendants, at their request, and in payment of and for divers quantities of merchandise purchased by the said plaintiff for the said defendants, and to raise money to pay therefor, they, the said defendants, then and there faithfully undertook and promised the said plaintiff that they

would accept the said bills of exchange as and when the same should be presented for that purpose to the said defendants. And the plaintiff avers, that afterwards, to wit, on the twentieth day of November, now last, at a certain place called Burlington, in the State of Vermont, he drew three certain bills of exchange upon the said defendants, in all amounting to the sum of ten thousand dollars, which said bills the said defendants, by virtue of their said undertaking and promise, ought, and were bound to have accepted, upon the presentment thereof.

Yet the said defendants, not regarding their said promise and undertaking, did not, nor would, accept the said three bills of exchange, as and when the same were presented to them for that purpose; but, on the contrary thereof, the defendants did then and there refuse to accept the said bills, and each thereof, and suffered and permitted the same to be protested for the non-acceptance thereof, whereby the plaintiff hath sustained great damage, by reason of the return of the said bills protested for non-acceptance, to wit, the sum of three hundred dollars, and have further been obliged to pay to the said holders of the said bills of exchange the further sum of three hundred dollars, to wit, at said Boston.

Yet the said defendants, though often requested, have never, nor hath either of them, paid the said several sums of money in the said several counts mentioned, or either of them, or any part thereof; but to pay the same the said defendants, and each of them, neglect and refuse, and still do neglect and refuse to do.

Messrs. Stickney & Dean to Orlin Rood,—Dr.

To com. for purchasing butter on the east side of Lake Champlain, at 1 cent per pound - - -	$1,014 25
To com. per do. do. do. cheese do., at ½ cent per pound - - - - - - -	1,876 87
To do. butter and cheese, on the west side Lake Champlain, at ½ cent per pound - - -	398 09
To cash advanced in purchasing butter and cheese for them - - - - - - - -	6,952 79
To commission on $15,750, raised for Stickney & Dean at different times, at ½ per cent. - -	393 75
To damages on drafts protested for non-acceptance, being 3 per cent. on $10,000 - - -	300 00
To carting butter and cheese to the Lake - -	200 00
To cash paid discount of notes - - -	174 75
To cash paid disc. of drafts - - - -	184 92
	$10,504 32

To the damage of said plaintiff, as he says, [of] the sum of fifteen thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein.

Witness the honorable Roger B. Taney, at Boston, the tenth day of December, in the year of our Lord one thousand eight hundred and six. FRANCIS BASSETT, *Clerk.*

Schedule D.—May, 1840. S.D.W.

June 29th, 30 days	$2,000 00	
July 5th, " "	2,000 00	
" 22d, Cash	68 36	
Aug. 17th, 60 days	2,000 00	
Sept. 3d, " "	3,500 00	
" 5th, 3 mos.	2,000 00	
" 12th, 60 days	3,000 00	
" 15th, " "	2,000 00	
" 20th, 3 mos.	3,000 00	
" 21st, Cash	6,500 00	(Letter 29th Sept.)
" 24th, 30 days	5 000 00	
Oct. 13th, Sight	10,000 00	
" 22d, Cash	6,000 00	
Nov. 4th, 20 days	5,000 00	
" 16th, 30 days	4,000 00	
" 15th, 60 days	2,578 50	
	$58,646 86	

Schedule E.

Orlin Rood, in account with Stickney & Dean.

Dr.	
For drafts and cash, per schedule	$58,646 86
For loss by short weight butter, after deducting Weller & Fitch's lots, viz., 5 p. c. on $24,146 85	1,207 35
For loss by bad quality 2 cts. per lb. on 127,676 lbs.	2,553 52
Excess over 18c. limits, from 1st Oct. to close	1,577 64
For loss by short weight on cheese, after deducting Jones's lot, viz., 10 per cent. on 30,628 65	3,062 86
For amount loss by bad quality, after deducting Jones's lot, viz., 1 c. per lb. on 369,988	3,699 88
For excess over limits on cheese	1,342 09
For loss on Jones's cheese and W. & F. butter, per statement	1,871 98
For 41 casks cheese not received, 7,995 lbs., at 8c.	639 60
For charge for commission, disallowed by defendants	3,289 21
For charge for raising money not allowed by defend'ts	393 78
For charge for damage on drafts not allowed by def'ts	300 00

	Cr.		
By amount claimed by him in this suit, the errors therein being corrected by debit, viz., spring purchase butter, 26,667 lbs. - - - -			$4,176 78
Fall purchase butter, 140,043 - - -			27,179 58
Fall purchase cheese, 394,727 - - -			33,130 27
Com'n on butter - - -	$1,667 00		
Com'n on cheese - - -	1,974 00		
	3,641 00		
Less, admitted error - - -	351 79		3,289 21
Com'n on 15,750, raised for defendants	- -		393 78
Damages on drafts - - - -	-		300 00

Schedule F.

This indenture, made this twenty-fourth day of December, in the year of our Lord eighteen hundred and thirty-six, by and between Orlin Rood, of Jericho, in the county of Chittenden and State of Vermont, yeoman, of the first part, and the Farmers and Mechanics' Bank, of Burlington, in the said State, a corporation duly established by a law of the said State, of the second part, witnesses:

That whereas the said Rood owes to the said Farmers and Mechanics' Bank ten thousand dollars, or thereabouts, he being the drawer of three certain bills of exchange now held by the said Farmers and Mechanics' Bank, and protested for non acceptance, copies whereof are contained in the schedule hereto annexed; and whereas the said Rood has just demands against Wm. Stickney & Henry Dean, both of the city of Boston, in the county of Suffolk and State of Massachusetts, traders and co-partners, which demands are mentioned or referred to in the schedule hereto annexed; and whereas the said Rood, for the recovery of the same demands, has commenced a suit against the said Stickney & Dean, which is now pending before the circuit court of the United States of America, in and for the first circuit and district of Massachusetts, next to be holden at said city of Boston, on the fifteenth day of May next, and in his original writ in the said suit has declared against the said Stickney & Dean, for the breach or non performance of certain agreements, promises, and undertakings of the said Stickney & Dean, therein at large set forth, and certain property, goods, and chattels of the said Stickney & Dean have been attached by the United States marshal for the district aforesaid, by virtue of the said original writ, to the amount or value of fourteen thousand dollars, in order that the same may be taken by virtue of any execution which may issue upon any judgment which the said Rood may recover in the said suit against the said Stickney & Dean to satisfy the same; and whereas the said Rood, as the agent of and for the said Stickney & Dean, has bought and sent to them a certain large amount of butter, cheese, and property, which

the said Stickney & Dean pretend that they have not accepted, and are not bound or willing to accept, and allege that the same belongs to and is at the risk of the said Rood, although the said Rood alleges that they were and are bound or obliged to accept, and have done acts amounting to an acceptance thereof, and consequently that he has no interest whatever therein; and whereas, if it should hereafter appear that the said Stickney & Dean were not obliged to accept, and had not accepted the said property, the said Rood in such case may have an interest therein; and whereas the said Rood, at the request of the said Farmers and Mechanics' Bank, has agreed to assign and transfer all sums of money due or owing from the said Stickney & Dean to him, and all benefit to be derived from the suit and attachment of the property of the said Stickney & Dean before mentioned, and all his just demands aforesaid, against the said Stickney & Dean, and all the right, title, and interest of the said Rood, if any he has, in or to the goods, chattels, and property, which the said Stickney & Dean pretend that they have not accepted, and are not bound to accept in trust, and as collateral security for the payment of all moneys due or owing from the said Rood to the said Farmers and Mechanics' Bank, and to pay over the balance, if any, to the said Rood or his assigns. Now, therefore, this indenture witnesseth, that in consideration of the premises, and of one dollar by the said Farmers and Mechanics' Bank to the said Rood in hand paid, before the ensealing of these presents, the receipt whereof is hereby acknowledged, the said Rood has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the Farmers and Mechanics' Bank aforesaid, all such sums of money as are due or owing from the said Stickney & Dean as aforesaid to the said Rood, and all benefit and advantage whatsoever to be derived from the said suit, and the attachment of the goods, chattels, and property therein made as aforesaid, and all his just demands aforesaid against the said Stickney & Dean, and all the right, title, and interest, if any the said Rood has, in or to the property, or any part thereof, which the said Stickney & Dean pretend that they have not accepted, and are not bound to accept as aforesaid. To have and to hold the afore granted and assigned premises, and the avails thereof, to the said Farmers and Mechanics' Bank, and their assigns, to their use and benefit; but, nevertheless, upon trust to apply the nett proceed and avails of the property and premises assigned as aforesaid, or intended so to be, after paying all the expenses incurred or to be incurred in the prosecution of the said suit, and obtaining judgment against the said Stickney & Dean, and all other expenses, costs, and charges, of executing the trusts of these presents, including the expense of this indenture thereout, toward the payment and satisfaction of all moneys due or owing from the said Rood to the said Farmers and Mechanics' Bank, until the same shall be fully paid and satisfied; and if there shall be any balance remaining to pay the same to the said Rood or his assigns. And the said Rood does hereby authorize and empower the said Farmers and Mechanics' Bank, in his name, to prosecute the

said suit, or any other suit which it may be necessary or expedient to commence for the recovery of the said demands, or any part thereof, from the said Stickney & Dean, to final judgment and execution; and in his name to release and discharge the said demands upon receiving payment or satisfaction thereof, or any judgment or execution which may be recovered or obtained therefor upon satisfaction or payment of the same, and in his name to ask, demand, and receive such payment and satisfaction, and in and about the premises to do and transact in his name all such matters and things as shall be deemed necessary or expedient for the recovery and receipt of the said demands and moneys due or owing from the said Stickney & Dean, or the amount of any judgment or execution which may be obtained therefor, in as full and ample a manner, to all intents and purposes, as the said Rood might have done himself, if this assignment had not been made.

And furthermore, to make in the name of the said Rood any arrangement or agreement in relation to the said goods, chattels, and property, or any part thereof, which the said Stickney & Dean pretend that they have not accepted, and are not bound to accept aforesaid, and in case the said Rood has any interest therein to demand and receive the same, and to compromise and settle the claims and demands of the said Rood against the said Stickney & Dean, and receive the avails thereof in trust as aforesaid, if they shall deem it expedient so to do, and for the best interest of the said Rood: Provided, however, that neither the said Farmers and Mechanics' Bank, nor their assigns, shall make any compromise with the said Stickney & Dean, whereby any of the said just claims of the said Rood shall be relinquished, without the assent of the said Rood previously thereto had, in writing, excepting the said Farmers and Mechanics' Bank shall allow to the said Rood the full amount of such just demands so compromised, without any deduction whatever, in the same manner as if they had received the full and entire amount thereof: And provided, also, that neither the said Farmers and Mechanics' Bank, nor their assigns, shall, in the name of the said Rood, or otherwise, do any act, matter, or thing in relation to the goods, chattels, or property aforesaid, which the said Stickney & Dean pretend that they have not accepted, and are not bound to accept, which may prejudice the said Rood, or in any way affect any right, which the said Rood has to insist, that the same have been, or that any part thereof has been, delivered or accepted, or that the said Stickney & Dean are bound or obliged to accept and take the same, or some part thereof, without the assent of the said Rood, by the said Farmers and Mechanics' Bank, or their assigns, first had and obtained in writing, for that purpose. And the said Rood agrees to aid and assist the said Farmers and Mechanics' Bank in procuring the necessary evidence of his demands against the said Stickney & Dean, and in prosecuting the said suit, or any other suit, to obtain payment or satisfaction for the just demands aforesaid; and that he, the said Rood, has not, nor will release or discharge any, or either of the said demands against the said Stickney & Dean. And the said Farmers and Mechanics' Bank do hereby cove-

nant and agree with the said Rood, that they will in all things faithfully discharge the trusts hereby in them reposed, and apply the proceeds and avails of the goods, chattels, and property hereby assigned or intended to be, to the payment [of] expenses, costs, charges, and demands aforesaid, in manner aforesaid, whenever the same shall be received, or to the payment of such part thereof as may not have been otherwise satisfied by the said Rood, and will pay the surplus or balance, if any there be, to the said Rood, or his assigns.

And the said Rood covenants and agrees with the said Farmers and Mechanics' Bank, that he will, on the reasonable request and at the proper expense of the said Farmers and Mechanics' Bank, make and execute to the said Farmers and Mechanics' Bank any further or other deed, writing, or instrument, which may, by counsel learned in the law, be deemed necessary or expedient for the further or better securing to the said Farmers and Mechanics' Bank the premises hereby assigned, or intended so to be, upon the trusts and for the purposes aforesaid.

In witness whereof the parties have hereto set their hands and seals the day and year first above written.

ORLIN ROOD. [SEAL.]
JOHN PECK, *President*.

Signed, sealed, and delivered in presence of—
CHARLES F. WARNEN.

November 22d, 1836.

Three months after date, please pay to Lewis Rood or order, two thousand dollars, for value received, which charge to account of your obedient servant,

ORLIN ROOD.

To Messrs. STICKNEY & DEAN, *Boston*.

Endorsed.

Pay the order of J. Peck, president.

LEWIS ROOD.

Pay the order of S. O. Mead, esq., cashier.

JOHN PECK, *President*.

$4000. *November 22d*, 1836.

Four months after date, please pay Lewis Rood, or order, four thousand dollars, for value received, which charge to account of your obedient servant,

ORLIN ROOD.

To Messrs. STICKNEY & DEAN, *Boston*.

Endorsed.

Pay the order of John Peck, president.

LEWIS ROOD.

Pay the order of S. O. Mead, esq., cashier.

JOHN PECK, *President*.

$4000. *November 22d*, 1836.

Three months after date, please pay to Lewis Rood, or order, four thousand dollars, for value received, which charge to the account of your obedient servant,

ORLIN ROOD.

To Messrs. STICKNEY & DEAN, *Boston*.

Endorsed.

Pay the order of John Peck, president.

LEWIS ROOD.

Pay the order of S. O. Mead, esq., cashier.

JOHN PECK, *President*.

Messrs. Stickney & Dean,

To Orlin Rood, Dr.

To cash balance paid for butter and cheese - - -	$6,932 19
To commission as per contract - - - - -	3,289 21
To carting butter and cheese, with time to the lake -	200 00
To commission on $15,150, raised at different times for their benefit, 2½ per cent. - - - - - -	393 15
To damages for not accepting drafts drawn on them which they were bound to accept - - - - -	300 00
	$11,134 55

Schedule G.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

The circuit court of the United States, within and for the Massachu-
[SEAL.] setts district.

To any attorney or counsellor at law of Madison, not of counsel, or who has not been written to, or communicated with, by either party:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Orlin Rood, of Chippeway territory, a witness to be produced, sworn, and examined on behalf of the defendants, to be used in a certain cause now pending in said court, wherein the Farmers and Mechanics' Bank are plaintiffs vs. William Stickney et al. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence; and the same,

so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, now holden at Boston, to be returned as soon as the same shall have been executed.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this first day of December, in the year of our Lord one thousand eight hundred and forty-three.

FRANCIS BASSETT, *Clerk.*

N. B. You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate, by interrogatories or suggestions, with the deponent, whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present, during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross interrogatories to the deponent in their order, and take the answer of the deponent to each fully and clearly.

The parties request the commissioner, or person executing this commission, to require the witness to answer each portion of each interrogatory and cross interrogatory distinctly and carefully.

United States circuit court, first circuit, district of Massachusetts.

FARMERS & MECHANICS' BANK
vs
WILLIAM STICKNEY and al.

Interrogatories to be propounded to Orlin Rood, of Chippeway territory, a witness to be produced, sworn, and examined on behalf of the defendants in the above entitled action:

1st. Whether or not had you any dealings with the plaintiffs in the fall of 1836?

2nd. Whether or not were you in the habit of borrowing money of them at that time, and of getting your negotiable paper discounted by them?

3d. Whether or not did you borrow the sum of $10,000, or any other like sum of them, on the 22d day of the month of November, 1836? If yea, whether or not did you borrow or hire it upon your own notes, or otherwise, or on discount thereof?

4th. If you shall have stated you made a loan on your own notes by a discount thereof, or otherwise, were they endorsed? If yea, be pleased to produce the notes. If you cannot, be pleased to state who were the endorsers on said notes. Whether or not were they, at that

time, good and responsible endorsers, or otherwise? [Objected to, because the notes are not produced.]

5th. If you shall have stated that you borrowed or raised said sum of said bank on your own notes, whether or not did you lodge or place in the hands of said bank, for any and what purpose, prior to, or after said loan, any, and if any, what, collateral security, or notes, or drafts, for said loan? If yea, what security, or notes, or drafts, did you give the bank?

6th. Whether or not did you sue Stickney and Dean in December, 1836? If yea, whether or not did you subsequently assign said suit to the plaintiffs? And whether or not did they carry it on at their own expense, or otherwise?

7th. Whether or not did the bank sue you for any of the said moneys loaned or discounted on the 22d November aforesaid? [Objected to, as better evidence could be produced of the matter, if it be in fact true.]

8th. Whether or not did they sue any of the persons who were responsible to them on your account for said loan, as endorsers or otherwise? If yea, who did they sue? What became of said suits? Were they settled? If yea, how? [Objected to, for the same reason as No. 7.]

9th. How was their suit against you settled? And when, as nearly as you can state?

10th. Whether or not did said bank require you to deposit any, and if any, what, amount or security, with them, to secure them for such amount as they should fail to recover in the suit assigned to them by you?

11th. Whether or not have you, or had you, any agreement or understanding, written or verbal, with said bank respecting the proceeds which might be recovered in the said suit brought against Stickney & Dean? If yea, what was it? Be pleased to annex it, or a true copy. If you cannot, be pleased to state the substance, and all the particulars, as nearly as you can, and annex all letters, or copies of all, received by you from said bank, or any one on their behalf; and if you cannot, state their substance, and when they were received. [The plaintiffs' counsel object to the statement of the contents of any paper not produced.]

12th. If you shall have stated you drew three drafts on Stickney & Dean on the 22d November, 1836, one for $2,000 and two for $4,000 each, and had the same discounted, be pleased to state how and for what purposes you used the sum raised at that time. What amount did you receive from the bank thereon?

13th. Whether or not did you pay into said bank any part thereof? If yea, how much? And what part? And to pay what notes, debts, or claims?

14th. If you shall have stated that you had said drafts on Stickney & Dean discounted by said bank, what amount did you receive thereon in money? And to what purposes did you apply it? Did said bank

receive from you any part thereof? If yea, for what notes or demand, or in payment for debts? Have you since repaid any part thereof to said bank?

15th. Whether or not did any, and if any, what persons endorse said drafts drawn by you on Stickney & Dean at the time they were placed with said bank?

[Objected to, as the drafts will show for themselves.]

16th. Did you exhibit, prior to your making said loans or getting said discount to said bank, to any and what officers thereof, any written agreement between you and Stickney & Dean for purchasing butter and cheese in 1836?

17th. If you shall have stated that said bank required you to deposit any amount with them as security at the time the suit was assigned, be pleased to state what has become of the security deposited with said bank, and which they required you to place with them at or about the time said suit was assigned to them? Be pleased to look at the letter annexed, and state who wrote it. And if the facts therein set forth are true.

[Objected to as leading and otherwise improper.]

18th. Do you know any other matter or thing which you now recollect, and which will be of any service to the defence in this cause? If yea, be pleased to state the same as fully and particularly as if specially interrogated thereupon.

LORINGS & DEHON, *for defendants.*

Cross interrogatories to be propounded to Orlin Rood, a witness to be examined on behalf of the defendants in the above entitled action.

1. If, in reply to the 2d direct interrogatory, you have said that you were in the habit of borrowing money of the *defendants* in the fall of 1836, and of getting your negotiable paper discounted by them, please state whether or not the money you so borrowed, or the paper so discounted, or the greater part of it, was not for or on account of Stickney & Dean.

2. Were you not, during the summer and fall of 1836, the agents of Stickney & Dean for the purchase of butter and cheese?

[Objected to, as proving written agency by parol.]

3. Did you or not inform the president, cashier, and some one or more of the directors of the Farmers and Mechanics' Bank, that you were agent of Stickney & Dean, and that you are authorized to raise money for Stickney & Dean; and did you not, from time to time, exhibit to them, or to some of them, the letters, or some of them, which you from time to time received from Stickney & Dean?

4. Were you in fact, at various times during your agency, (if you were agent for Stickney & Dean,) authorized to borrow or raise money for them in the course of your purchases of butter and cheese for them, to pay for butter and cheese?

[Objected to as the 2d.]

5. What amount of money did you borrow or procure by discount of

and from the Farmers and Mechanics' Bank during the spring, summer, and fall of 1836, on your own private account, for your own private use? If you did any amounts, state particularly what, when, and for what purpose, and what paper, notes, or drafts you gave them therefor.

6. Have you now with you any of your papers, books, or notes, and drafts, which relate to your butter and cheese transactions of 1836?

7. If you say, in reply to the third (3d) direct interrogatory of defendants, that you did borrow the sum of $10,000, or any other like sum of said bank, on the 22d of November, 1836, please state whether or not you borrowed it for yourself or for Stickney & Dean, for your own private use, or to pay for butter and cheese bought by you for Stickney & Dean, or to pay money or debts owing by them?

8. When were you last in Burlington, Vt.? When did you last see and converse with any and what officer or director of the Farmers and Mechanics' Bank?

9. When did you leave the State of Vermont? Where have you resided for two years past? State particularly in what places you have resided during that time, and how long in each place, and where you now reside.

10. What is your age and present occupation?

11. Have you, since January 1st, 1843, received any letter or letters from Stickney & Dean, or from Mr. Stickney or Mr. Dean, or from any one, and whom, on their behalf? If yea, please annex all such letters as you have received, or true and perfect copies of them. If you cannot so annex them, or copies of them, state the reasons why you cannot. State as nearly as you can the whole contents of such as you do not annex.

12. Have you, since January 1st, 1843, received any and how much money from Stickney & Dean, or from Mr. Stickney, or Mr. Dean, or from any one, and whom, in their behalf? Have you received from Stickney or Dean, or from any and what agent of theirs, any promise or assurance, or have you been told, by letter or by word of mouth by them, or by either of them, or by any and what agent of theirs, that "any amount you ask for helping them (or either of them) you shall have;" "that the money is ready, or any thing like it?"

13. Have Stickney & Dean, or has Mr. Stickney or Mr. Dean, any agent who has communicated with you about this suit, or about your giving your deposition in this suit, or about your assisting them, or either of them, in regard to it? If yea, state who that agent is, where he resides, what has passed between him and you, *every thing*. If he has written to you, or you to him, annex all the letters which have so passed, or annex copies; or if you cannot do so, state why not. And state fully the whole contents of such as you do not annex as nearly as you can.

14. Have you seen Mr. Stickney or Mr. Dean since January, 1843; if yea, when and where? State fully, minutely, and particularly, all that passed between you, all that was said by you and them, or either of them.

15. If you have said that Stickney & Dean, or either of them, has any agent with whom you have communicated, state how you know he is or was their agent, or the agent of either of them. Did he give you any letter, or show you any letter or letters from Stickney & Dean, or from either of them? If yea, annex it or them; and if you cannot, say why you cannot; and state the whole contents of such letter or letters; do you know the handwriting of Stickney & Dean?

16. Have you received any offer or promise, or temptation of any kind, directly or indirectly, from Stickney & Dean, or from Stickney or Dean? If you have, state fully and particularly what, when, and where; from whom it came; how it came; and all you know about it.

17. When did you first hear that your deposition or assistance might be wanted in this cause; how and from whom did you hear it? State all that was said or done by any and what persons concerning it.

18. Who is or has been present while you have been giving your deposition?

19. Did you, about September or October, or any time during the year 1843, receive from Mr. Stickney a letter; did you also at or about the same time receive some money, and if so, how much? Annex that letter, or a copy of it; if you cannot, say why you cannot; and in that case, state the contents of the letter; what was in it.

20. If you know any other matter or thing favorable to the Farmers and Mechanics' Bank in this suit, state the same as fully as if particularly interrogated thereto.

CHOATE & CROWNINSHIELD,
Attorneys to defendants.

1st additional interrogatory. If, in reply to the third cross interrogatory, you shall have stated that you informed the president, cashier, and some one or more of the directors, that you were agent of Stickney & Dean, and that you were authorized to raise money for them, state the persons to whom you gave such information, and the time when you gave it; and if you shall have stated you exhibited any letters of the defendants, state which of their letters were so exhibited, and the several persons to whom you exhibited them.

2. Have you seen any one, or had communication with any one, for and in behalf of the bank, since October, 1843?

LORING & DEHON, *for def'ts.*

A true copy. Attest: FRANCIS BASSETT, *Clerk.*

WISCONSIN RIVER, *on the Chippeway Territory.*

MESSRS. STICKNEY & DEAN:

GENTS: From the last news I received from the lower country, it contained the information that you were writing to several gents in this territory making the inquiry where I can be found, alleging as the object, you wanted to obtain my deposition, but did not wish me to know any thing about it, all of which they thought doubtful.

But, gents, if you wish to know where I am, I will tell you. I reside, as above described, without the jurisdiction of the territory, on In-

dian lands, to work for a company in manufacturing pine lumber, and the nearest point for communication, by mail, is Madison, about 300 miles from where I am, at which place I shall send this by private conveyance. Now, as to my deposition, I cannot conceive, nor believe for one moment, that you are honest in your pretensions, for the last information I received was that the difficulty between the bank and your house was settled by mutual consent, and both parties satisfied; and I was the only one that suffered by the suit eventually, as the bank required of me a large amount to be held on deposite until the suit was decided, which deposite I made, and all the news I could ever get from the bank was, it is settled; and it took all my deposite to make them good. Supposing this to be true, I could not for one moment think that you wanted any thing of me in the affair; but if this is not so, and you want any thing of me to assist you to get justice done, I say frankly, any thing I can do for you, or assist you by my deposition to close the concern, I am ready and willing to do it; and if you write to me, directing your letter to Madison, W. T., in season, so that it arrives there previous to August 15, it will be sent to me. If you write to me, and state frankly what you want, if it is in my power you shall have it; for I can say, frankly, that I am not a friend of the bank in this matter in view of their treatment to me. I think all is not right; but if it is true, as the gent. you wrote to thought was the case, that you wanted to find where I was that you might try to bring me in the law a little, I can only say, that if you have any claim against me, all I have got is to be divided among my creditors, and if you have any claim against me, you can have your share. But I must close, as the man who takes this is waiting; and in conclusion I will request you, if you deem it just and expedient, I should consider it a great favor to receive a line from you, stating how the matter was settled, if settled at all; if not, how it stands now.

I am, with great respect, your ob't serv't,

ORLIN ROOD.

TERRITORY OF WISCONSIN,
Dane county, ss:

I, Orlin Rood, do solemnly swear, that I will true answers make to the interrogatories annexed to a commission for taking my deposition, in a certain cause now depending in the circuit court of the United States, within and for the Massachusetts district, wherein the Farmers and Mechanics' Bank are plaintiffs, and William Stickney et al. are defendants, so help me God.

ORLIN ROOD.

Subscribed and sworn to before me, this 4th day of March, A. D. 1844.

SIMEON MILLS,
Clerk dist. ct. Dane county, W. T.

Deposition of Orlin Rood, a witness of lawful age, produced, sworn, and examined at the office of Chauncy Abbott, attorney at law, in the

town of Madison, and county of Dane, and Territory of Wisconsin, before me, Chauncy Abbott, an attorney at law, at Madison aforesaid, who have not been written to or communicated with by either party; and to whom the commission and interrogatories have been sent, for said purpose, in a certain case now pending in the circuit court of the United States, within and for the Massachusetts district, wherein the Farmers and Mechanics' Bank are plaintiffs, and William Stickney et al., defendants, on the part of the defendants.

The said Orlin Rood being produced, sworn, and examined, in answer to the interrogatories hereunto prefixed, deposeth and saith as follows, to wit:

In answer to the first interrogatory, he says: 1st. I had dealing with the plaintiff in the fall of 1836.

In answer to the second interrogatory: 2d. I was in the habit of borrowing money of the plaintiffs in 1836, and of getting my negotiable paper discounted by them.

Answer to third interrogatory: 3d. I did, on the 22d day of November, 1836, borrow the sum of ten thousand dollars of the plaintiffs, as nearly as I can recollect; I borrowed said sum of money on three drafts drawn on Stickney and Dean, of Boston, one for $2,000, and two for $4,000 each. The drafts were drawn in favor of Lewis Rood, and by him endorsed to the bank.

Answer to the fourth interrogatory: 4th. I gave no other security or notes to the plaintiffs for the aforementioned sums of money, except the drafts mentioned in my answer to the third interrogatory, which were endorsed by Lewis Rood. I do not think that the endorser was at the time worth the amount of money obtained on said drafts.

Answer to the fifth interrogatory: 5th. At the time of making said loan of the bank, I exhibited to them, in addition to the drafts mentioned in my answer to the third interrogatory, a letter from Stickney and Dean, authorizing me to draw on them for ten thousand dollars. I gave no other security before or after.

Answer to the sixth interrogatory: 6th. I did sue Stickney and Dean in December, 1836. I did subsequently assign said suit to the plaintiffs. I do not remember that I was to be liable for costs incurred in the prosecution of said suit; I think the plaintiffs were to prosecute it at their own expense, though I cannot say positively. I afterwards authorized my brother, Lewis Rood, to make any arrangement for me with the bank that he might see fit; but I have not been informed whether he made any other or further arrangement in the case.

I did subsequently, in the fall of 1837, make the following arrangement with the bank: I owed the bank $700, I sold to Lyman and Marsh a certain promissory note for five hundred and sixty ($560) for which they agreed to become responsible to the bank on my account for that amount, which the bank agreed to on the following conditions, to wit: If the expenses in the said suit, including attorney's fees, should exceed five hundred dollars, then one half of such excess was to be charged to me and deducted from the said $560, to be paid the bank by Lyman

and Marsh on my account, and the balance of said $560 to be applied on my note to the bank for $700; but, in case the costs in said suit should not exceed $500, the whole amount of the said $560 from Lyman and Marsh was to be endorsed on my note to the bank for $700.

Answer to the 7th interrogatory: 7th. The bank did not sue me for any part of the money loaned on the 22d of November, 1836.

Answer to the eighth interrogatory: 8th. I have no knowledge that any suit has ever been commenced by the bank, against those who were or might have been responsible to said bank on my account, either as endorsers or otherwise.

Answer to the ninth interrogatory: 9th. The bank never commenced any suit against me for the money loaned on the 22d November, 1836.

Answer to the tenth interrogatory: 10th. I do not now recollect that the bank required me to deposite with them any security to secure them for such amount as they might fail to recover of Stickney and Dean. I am sure I deposited no such security.

Answer to the eleventh interrogatory. 11th. In relation to the said suit against Stickney & Dean, assigned by me to the bank, I made the following agreement with one of the directors of the bank, whose name I think was Nichols:

The bank was to prosecute said suit, and if they recovered of Stickney & Dean more than the amount due on said drafts, including interest and costs of suit, they were to pay such excess to me. The suit was commenced to recover not only the amount due on the drafts, but also the commission due me from Stickney & Dean for the purchase of butter and cheese, as well as the damages I had sustained.

If the bank recovered less in said suit than the amount due on said drafts, with interest and costs, then I and my brother, Lewis Rood, were still to be held liable to said bank for such deficiency.

I think there was a written agreement to the effect of what I have stated above, though cannot be positive. I think I never had a copy of such agreement, if it indeed existed. I can find no such agreement among my papers.

I have received only two letters from any of the agents of the bank in relation to said suit, neither of which have I preserved. The first was from the cashier of the bank, Chas. F. Warner, requesting me in general terms to come on and attend at the trial of said suit, as I was better acquainted with the circumstances than any one else. I received this letter four or five years since.

I have received one letter from the president of the bank, John Peck, on the same subject, which was to the same effect as the one I received from the cashier. I have forgotten the date of the last letter, but think it was received in the fall or summer of 1843.

Answer to the twelfth interrogatory. 12th. The three several drafts drawn by me on Stickney & Dean, on the 22d of November, 1836—one for $2,000, and two for $4,000 each, were paid to me by the bank, reserving only the usual discount of 6 per ct. for the time said drafts had to run before they fell due. I paid all the money so raised, for

butter and cheese purchased by me for Stickney & Dean as their agent.

Answer to the fourteenth interrogatory. 14th. The drafts on Stickney & Dean were discounted by the bank. I received the full amount in money, saving and reserving to the bank the usual discount of 6 per cent. I applied the money so raised in paying for butter and cheese purchased by me for Stickney & Dean as their agent. The bank did not receive from me any part thereof. I have not since repaid any part thereof to the bank.

Answer to the 13th interrogatory. 13th. I did not pay into said bank any part of the money discounted as aforesaid, in payment of any notes, drafts, or claims whatever.

Answer to the fifteenth interrogatory. 15th. The drafts drawn by me on Stickney & Dean were endorsed at the time they were deposited with the bank, by my brother, Lewis Rood, and by no other person.

Answer to the sixteenth interrogatory. 16th. I did, at different times previous to the 22d of November, 1836, exhibit to the president and cashier of said bank, and, as I think, to some one or more of the directors of said bank, a written agreement between myself and Stickney & Dean for the purchase of butter and cheese; and also a letter from Stickney & Dean, authorizing me to draw on them for ten thousand dollars, specifying the time said drafts should run, [and] when they would be able to meet them.

Answer to the seventeenth interrogatory. 17th. Nothing was said to me by any agent of the bank about depositing security at or about the time I assigned said suit to the bank, according to the best of my recollection.

I wrote the letter referred to in the 17th interrogatory. The letter is true as to the material statements contained therein. The deposite which I then refer to as having been required of me by the bank, was as follows:

In my purchase of butter and cheese for Stickney & Dean, they did not furnish me with as much money as I found it necessary to employ in said business. I raised four thousand dollars on my own account. I paid the bank the said four thousand dollars, except seven hundred dollars, ($700); to secure the payment of which, I made the arrangement with Lyman & Marsh to become responsible to the bank for $560, on the conditions as set forth in my answer to the 6th interrogatory, to wit: If the expenses in said suit vs. Stickney & Dean, assigned by me to the bank, should exceed $500, then one half of such excess was to be deducted from the $560 to be paid to the bank by Lyman & Marsh, on my account; and what remained of the $560 was to be endorsed on my note for $700; and in case no part of the said $560 should be required for the payment of costs, then the whole amount was to apply on my note for $700.

The bank still holds said note for $700, unless it has been taken up by the endorsers.

Answer to the eighteenth interrogatory. 18th. I do not now recol-

lect any other matters or things that will be of any service to the defendants in this case.

Answer to the first cross interrogatory. 1st. The greater part of the money which I borrowed of the bank in the fall of 1836, was on account of Stickney & Dean, and was paid out by me for the purchase of butter and cheese for the defendants. I have no recollection of borrowing any money of the bank for any other purpose.

Answer to the second cross interrogatory. 2d. I was, during the summer and fall of 1836, the agent of Stickney & Dean for the purchase of butter and cheese.

Answer to the third cross interrogatory. 3d. I did exhibit to the president and cashier of the Farmers and Mechanics' Bank my contract with Stickney and Dean for the purchase of butter and cheese, informing them of my agency in said business, and my authority to raise money for the defendants. I did, also, from time to time, exhibit to the president and cashier, and to some of the directors of said bank, some of the letters which I had received from Stickney & Dean on the subject of the purchase of butter and cheese.

Answer to the fourth cross interrogatory. 4th. I was at various times, during my purchases of butter and cheese, authorized by the defendants to raise money for them for the payment of butter and cheese.

Answer to the fifth cross interrogatory. 5th. I do not recollect that I did, during the spring and fall of 1836, borrow any money of the Farmers and Mechanics' Bank for my own private use. I think I did not.

Answer to the 6th cross interrogatory. 6th. I have not now with me any of my books, papers, notes, or drafts, which relate to my butter and cheese transactions in 1836.

Answer to the seventh cross interrogatory. 7th. The defendants directed me to draw on them for ten thousand dollars, ($10,000;) and, if I should not require more than eight thousand dollars to pay for butter and cheese, to remit the balance to them at Boston. I paid out $8,000 on contracts that I had already made for butter and cheese. There then remained over $2,000 unpaid for butter and cheese that I had shipped to Stickney & Dean. I took the $2,000 to Boston, and stated the situation of the business to Stickney & Dean, and they directed me to apply the same for the payment of butter and cheese which I had shipped to them, which I accordingly did.

Answer to the eighth cross interrogatory. 8th. I was last in Burlington, Vermont, on the 14th of November, 1837. I last saw the president and cashier, and some of the directors of the bank, when I last left Burlington. I cannot say whether any conversation then took place between myself and them or not.

Answer to the ninth cross interrogatory. 9th. I left the State of Vermont on the 14th day of November, 1837, at 9 o'clock, P. M., on the steamboat St. Alban's. I have resided for the last two years on the Wisconsin river, in Portage county, Wisconsin Territory; during that time, I have frequently been at this place, Madison, where my family

have been living; from which place I have been in the habit of receiving and forwarding all my communications by mail. I now reside on the Upper Wisconsin, as I have heretofore done.

Answer to the tenth cross interrogatory. 10th. I was 43 years old on the 5th day of August, 1843. I am at present occupied in lumbering, on the Wisconsin river.

Answer to the eleventh cross interrogatory. 11th. I have, since the 1st of January, 1843, received one letter from Wm. Stickney, which I have not preserved. Mr. Stickney stated generally, in said letter, that the difficulties between him and the bank were still unsettled, and that the bank were trying to do him great injustice. He requested me to assist him in settling the business by my deposition or otherwise. He enclosed me five dollars, and said he would send me more if it should be required. He stated that he had appointed Mr. Catlin, of Madison, his attorney to attend to the business, and had forwarded him funds for the expenses.

Answer to the twelfth cross interrogatory. 12th. I have, since the 1st of January, 1843, received from Mr. Stickney $5, as stated in my answer to the 11th cross interrogatory, which is all the money I have received from Stickney or Dean, or any one on their behalf. Mr. Stickney said, as nearly as I can now recollect, that he would send me more money if it should be required. Mr. Catlin afterwards told me that he had, or could have, what money would be necessary, but that he did not know whether Mr. Stickney wished to have my deposition taken, or have me come on to attend the trial. I have had no other communication with Mr. Stickney or Dean, or any agent of theirs, on the subject, as I now recollect.

Answer to the thirteenth cross interrogatory. 13th. I have had some conversation with John Catlin, as the agent of Mr. Stickney, on the subject of giving my deposition in this case. He stated to me that Mr. Stickney had written to him on the subject of procuring my assistance in the suit with the bank, but that he did not know whether my personal attendance, or my deposition, or books and papers, were required; that he could not understand exactly what was wanted. He stated that he had, or could have, the necessary funds. I have had no other communication with any other agent of the defendants on the subject.

Answer to the fourteenth cross interrogatory. 14th. I have not seen Mr. Stickney or Dean since the first day of January, 1843.

Answer to the fifteenth cross interrogatory. 15th. Mr. Catlin showed me two letters from Mr. Stickney, requesting him, Mr. Catlin, to act as his agent in the matter, and directing him to draw for the necessary funds. This was all the letter contained. I know Mr. Stickney's handwriting, and the letters were written by him. I gave the letters back to Mr. Catlin. They have never since been in my possession, and I have no means of procuring them.

Answer to the 16th cross interrogatory. 16th. I have not received any temptation or reward from Mr. Stickney or Dean, or any one on their behalf, further than that I should be reasonably paid for my trouble

and expenses in the matter. I have before stated all that passed on the subject.

Answer to the seventeenth cross interrogatory. 17th. I first learned in June, 1843, by a letter from my brother in Fairplay, W. Terr'y, that one Doct. Little had received a letter from Mr. Stickney, inquiring where I was, and stating that my assistance was needed in this suit, and requesting Doct. Little to inform him, Mr. Stickney, where I was, but not to let me know any thing about it. On the receipt of my brother's letter, I wrote to Messrs. Stickney & Dean the letter attached to the foregoing interrogatories. In August following, I received in answer a letter from Mr. Stickney, stating that my assistance was required in this suit.

Answer to the eighteenth cross interrogatory. 18th. No one is or has been present while I have been giving my deposition, except Chauncy Abbott, the commissioner.

Answer to the nineteenth cross interrogatory. 19th. I did in August or September receive a letter from Mr. Stickney, in which he sent me $5. I kept the letter in my pocket for some time. It got wet and defaced, and was lost or thrown away. The letter stated that the business between him and the bank was still unsettled, and that my assistance would be required, and that he would send me more money, if it was required, as before stated.

Answer to the twentieth cross interrogatory. 20th. I do not now recollect any other matter or thing favorable to the Farmers and Mechanics' Bank, further than I have already stated.

Answer to the first additional interrogatory. 1st. I gave the information to the president and cashier. I think John Peck was president, and Thos. Hankley cashier. I think that I also exhibited the agreement and letters referred to to Willis Lyman and S. E. Howard, directors. I exhibited the letter authorizing me to draw on Stickney & Dean for $10,000. I think I exhibited this letter to Mr. Hankley.

Answer to the second additional interrogatory. 2d. I cannot say whether I have received any letters from any agent of the bank since October, 1843. I received a letter from the president of the bank, John Peck, urging me to come on and attend the trial of said suit, and saying that this would also be acceptable to the defendants. I think this letter was received in the summer or fall of 1843, but I cannot be positive.

ORLIN ROOD.

TERRITORY OF WISCONSIN, *Dane county, ss:*

I, Chauncy Abbott, attorney, &c., to whom the commission from the circuit court of the United States for the Massachusetts district has been sent for taking the deposition of Orlin Rood, which commission is hereunto prefixed, do certify, that under the authority contained in said commission, I did cause to come before me, at my office, in Madison, in the county of Dane, and Territory of Wisconsin, on the 4th day of March, A. D. 1844, Orlin Rood, the witness named in said commission; and the said witness having been first duly sworn, I did particularly

examine him upon each of the interrogatories, cross interrogatories, and additional interrogatories annexed to said commission, touching his knowledge of any thing that may relate to a certain action now pending in the circuit court of the United States aforesaid, wherein the Farmers and Mechanics' Bank are plaintiffs vs. William Stickney et al., defendants, and did reduce his answers to the said interrogatories to writing, and caused the same to be subscribed by said witness, and that said answers are the same that precede, and are returned with this certificate.

I further certify, that I did not permit either parties in said suit to attend at the taking of the foregoing deposition; that I did not permit either party in any way to communicate with said witness, and that no other person except myself and witness was present during the taking of said deposition; that the witness was first duly sworn by Simeon Mills, clerk of the district court of this county, duly authorized by the laws of this Territory to administer oaths.

In witness whereof I have hereunto set my hand and affixed my private seal, this ninth day of March, A. D. 1844.

CHAUNCY ABBOTT, [SEAL.]
Commissioner.

Fees: Commissions, 4 days, at $5 00 per day -	$20 00
Witness 200 miles travel, 10 cts. per mile -	20 00
" 4 days attendance, $1.25 - -	5 00
Paid by defendants - -	$45 00

C. ABBOTT, *Commissioner.*

[Postage paid, $3.50.]

I, James B. Robb, clerk of the circuit court of the United States, for the district of Massachusetts, certify that the forgoing is a true transcript of the record of said cause.

In testimony whereof I have hereto set my hand and affixed the seal of the said circuit court, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and forty-seven, and in the seventy-second year of the independence of the United States of America.

JAS. B. ROBB, *Clerk.*

UNITED STATES, *ss:*

The President of the United States, to the judges of the circuit court, [SEAL.] holden in and for the district of Massachusetts, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between the Farmers and Mechanics' Bank, a corporation duly established by a statute of the State of Vermont, plaintiff, and William Stickney and Henry Dean, both of Boston, in said district of Massachusetts, merchants, and co-partners, and citizens of the State of Massachusetts, defendants, in a plea of the case, a manifest error has intervened to the great damage of the said Stickney and Dean, as in their complaint has been stated. And as it is just and proper

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that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this sixth day of July, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second.

JAS. B. ROBB, *Clerk.*

Allowed by PELEG SPRAGUE,
Judge U. S., Mass. dist.

The Farmers and Mechanics' Bank acknowledge notice of the foregoing writ of error, and waive citation.

By their attorney: R. CHOATE.

Filed 22d November, 1847.